
Minister for Māori Crown Relations: Te Arawhiti

Weekly Status Report

Date: 15 December 2023
Report No. 2023/2024 – 98

Priority: Low

Action sought

Minister for Māori Crown
Relations: Te Arawhiti
(Hon Tama Potaka)

Note the Weekly Status Report.

By: 19 December 2023

Contact for phone discussion (if required)

Name	Position	Mobile	1 st Contact
Lil Anderson	Tumu Whakarae		✓
Sheridan Smith	Deputy Chief Executive, Partnerships		

S9(2)(a)

Key matters this week

1. The key issues for this week are:

1.1. **Fast-track consenting system for infrastructure:** On 4 December, Cabinet directed the Ministry for the Environment (**MfE**) to develop options for a new fast-track consenting system for infrastructure. There is a risk that roles for iwi/Māori in decision-making on resource consents may be bypassed, impacting settlement commitments. If options in policy development do not align with the coalition commitment to honour undertakings by the Crown in past Treaty settlements, you will need to raise this issue with relevant colleagues, and possibly Cabinet, in the new year. We will update you on whether this is necessary.

1.2.

[REDACTED]

Out of Scope

[REDACTED]

[REDACTED]

[REDACTED]

Recommendations

3. It is recommended that you:

3.1. **note** the updates provided in this Weekly Status Report.

Lil Anderson
Tumu Whakarāe

NOTED

Hon Tama Potaka
Minister for Māori Crown Relations: Te Arawhiti

Date: / / 2023

Updates

Out of Scope

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

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Strategy and Policy

Fast-track consenting system for infrastructure

26. On 4 December, Cabinet directed the Ministry for the Environment (**MfE**) to develop options for a new fast-track consenting system. The intention is for the legislation to be introduced within the government's first 100 days – i.e. by early March 2024 [CAB-23-MIN-0473 refers].
27. Fast-track consenting has major implications for Māori rights and interests, as we advised you on 29 November [report 2023/24 – 4 refers]. Treaty settlements, takutai moana legislation and iwi-council partnerships under the Resource Management Act 1991 (**RMA**) all provide roles for iwi/Māori in decision-making on resource consents.
28. There is a risk those decision-making arrangements could be bypassed by a new system. The risk is particularly acute because the Minister for Regional Development has put forward wide-ranging proposals with few protections for Māori interests, and the time available for engagement with PSGEs and other groups is extremely limited.
29. We are working with MfE on initial advice to the Minister Responsible for RMA Reform, Hon Chris Bishop, on key choices for the fast-track legislation. If these discussions do not ensure settlement commitments are protected in the policy development, you will need to discuss this matter with your colleagues to ensure the government's commitment to uphold Treaty settlements is fulfilled. We will keep you updated and provide further advice when the Minister Responsible for RMA Reform seeks your input on the Cabinet paper early next year.

Out of Scope

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Official correspondence

[Redacted]

Out of Scope

[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

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Calendar

Out of Scope

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
December 2023						
18	19	20	21	22	23	24
25	26	27	28	29	30	31
Christmas Day	Boxing Day					
January 2024						
1	2	3	4	5	6	7
New Year's Day	Day after New Year's Day		<i>Te Kooti defeated at Ngātapa pā, Poverty Bay, 1869</i>	<i>Occupation of Takaparāwhā Bastion Point began, 1977</i>		

KEY:

	Parliament sitting days
	Cabinet Committee days
	Public Holidays
<i>Italicised</i>	Events / hui

From: [Mclauchlan, Kurt](#)
To: joana.johnston@parliament.govt.nz
Cc: [Anderson, Lillian](#); [Taylor, Benedict](#); [Te Arawhiti OCE](#); [Sargent, Melanie](#)
Subject: Fast track consenting engagement
Date: Friday, 12 January 2024 11:42:49 am
Attachments: [image001.png](#)
[image002.png](#)

Kia ora JJ

Following on from a text exchange from Lil, and in the absence of a weekly report this week, this email seeks direction on a fast-track consenting issue concerning Minister Potaka.

Lil said she may briefly raise this with Minister Potaka when talking to him at 3:30, we will also include an entry in next weeks weekly report.

Background

Fast-track consenting has major implications for Māori rights and interests, including Treaty settlements and takutai moana rights, as we advised the Minister last year.

On 4 December, Cabinet directed the Ministry for the Environment to develop options for a new fast-track consenting system. The intention is for a Bill to be introduced within the government's first 100 days – i.e., by early March 2024.

Issue

Hon Chris Bishop (as Minister Responsible for RMA Reform) has made initial policy decisions for the Bill. He wants the Bill to provide a wide-ranging, standalone and streamlined process for approving regionally or nationally significant projects. These decisions heighten risk for the Māori Crown relationship because they will be hard to align with Treaty settlements and takutai moana legislation. Additionally, Minister Bishop has previously **not agreed** with agencies' recommendation to engage with PSGEs about the Bill – which was included in the advice to Minister Bishop at our request. The Crown has previously accepted that changes to settlement legislation must be agreed with PSGEs.

There is therefore a risk that the fast-track Bill will not be consistent with the coalition agreement to honour Crown undertakings in previous Treaty settlements.

We understand Minister Bishop has forwarded advice to MfMCR and other Ministers and has agreed to meet with portfolio Ministers to discuss key issues before seeking Cabinet agreement to the major policy parameters for the Bill on 23 January.

Recommendation

We recommend Minister Potaka meet with Minister Bishop (or call him) as soon as possible to discuss the need for substantive iwi engagement. Such engagement would help better protect settlements – but only partially mitigate the risk because settlements interact with consenting in complex ways and time is very limited. We will provide further advice in the next weekly report and can provide further advice ahead if a meeting is organised.

Please note a Cabinet paper, is expected on 15 January to go out for Ministerial consultation next week. We are working to ensure there is a recommendation to engage in the draft paper but there is a risk it may not be included in the final paper given Minister Bishop's previous indication on this matter. The draft Cabinet paper also proposes that Minister Potaka be part of a small group of Ministers with delegated responsibility for further fast-track policy decisions and we support this.

The draft Cabinet paper also suggests that the Prime Minister and other Ministers should discuss fast-track consenting in their engagements at Rātana and Waitangi.

JJ,

If Minister Potaka has any concerns being part of the group of Ministers with delegated authority, please let us

know. And also, please let us know if he speaks to Minister Bishop.

Ngā mihi

Kurt



Kurt McLauchlan

DIRECTOR – STRATEGY AND POLICY

CEL: [REDACTED] **S9(2)(a)**

WEB: tearawhiti.govt.nz

The Office for Māori Crown Relations – Te Arawhiti

Level 3, Justice Centre, 19 Aitken Street, SX10111, Wellington 6011

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From: Taylor, Benedict
To: Taylor, Benedict
Subject: RE: RESPONSE PLEASE: Fast Track Consenting
Date: Wednesday, 17 January 2024 12:09:07 pm
Attachments: CONSULTATION - CAB-379 - A permanent fast-track consenting regime for regional and national projects of significance.docx
image001.png
image002.png
image003.jpg

From: Te Arawhiti OCE <TeArawhitiOCE@tearawhiti.govt.nz>

Sent: Wednesday, 17 January 2024 11:59 am

To: Joana Johnston <Joana.Johnston@parliament.govt.nz>; Mclauchlan, Kurt <Kurt.Mclauchlan@tearawhiti.govt.nz>

Cc: Te Arawhiti OCE <TeArawhitiOCE@tearawhiti.govt.nz>; Hyett, Fern <Fern.Hyett@tearawhiti.govt.nz>; Taylor, Benedict <Benedict.Taylor@tearawhiti.govt.nz>; Arthur-Roche, Joey <Joey.Arthur-Roche@tearawhiti.govt.nz>; Fraser, Warren <Warren.Fraser@tearawhiti.govt.nz>; Sargent, Melanie <Melanie.Sargent@tearawhiti.govt.nz>; Anderson, Eden <eden.anderson@tearawhiti.govt.nz>

Subject: RE: RESPONSE PLEASE: Fast Track Consenting

Kia ora JJ

Advice as requested for Minister Potaka on *A permanent fast-track consenting regime for regional and national projects of significance*, a draft Cabinet paper circulated for Ministerial consultation by Minister Bishop (as the Minister Responsible for RMA Reform). Minister Bishop intends to take the paper to Cabinet on 23 January.

[@Fern Hyett](#) – copying you for your info but no issues for Minister Goldsmith to raise

Proposal

- On 4 December, Cabinet directed officials to develop options for a new fast-track consenting system. The intention is for a Bill to be introduced within the government's first 100 days – i.e., by early March 2024.
- This latest Cabinet paper seeks agreement to broad policy parameters for the new fast track system. It proposes a wide-ranging and streamlined process for quickly approving regionally or nationally significant projects and providing certainty to investors. The paper proposes delegating the more detailed policy decisions to come to a group of Ministers including you (*rec 5*). Delegation of this sort is quite common across government priorities when decisions are required quickly, or are complex. You and the other delegated Ministers (Ministers Bishop, Jones and Brown) will receive briefings from the Ministry for the Environment to support the decision-making, turnaround may be reasonably quick given the Bill is seeking to be introduced in March. Te Arawhiti can provide briefing support as required.

MCR implications and our engagement on the paper

- Fast-track consenting has major implications for Māori rights and interests because Treaty settlements and takutai moana legislation provide enhanced roles for iwi/Māori in consenting processes related to culturally significant areas or environmental features. New consenting processes therefore have the potential to circumvent or undermine those rights.
- There is therefore a risk that the fast-track Bill will not be consistent with the coalition agreement to honour Crown undertakings in previous Treaty settlements.
- We have sought to mitigate this risk by engaging with other agencies in the drafting of this paper. Key safeguards included at our request include confirmation there will be:
 - legislative protections for Treaty settlements and other Treaty-related obligations (*rec 35*); and
 - engagement with affected PSGEs and other Māori groups (*recs 38-39*). However the legislation is to be introduced in March the window for this engagement is extremely limited and the Crown has previously accepted that changes to settlement legislation must be agreed with PSGEs.
- There was a concern these provisions may not have made the final paper, but Minister Bishop supported their inclusion, which does reduce some risk in the process.
- We support your inclusion in the group of Ministers with delegated responsibility for further policy decisions (*rec 5*) because that group will be responsible for making decisions on key issues like the Treaty clause and protections for Treaty settlements.

Recommended response to Minister Bishop

- While we remain concerned at the broad risks and timeframes associated with the proposal we do not recommend you raise any issues with the paper. In the circumstances those risks are best managed through the engagement with iwi/Māori, your role in the group of delegated Ministers and our support to agencies in the policy development process.
- We recommend you respond to Minister Bishop informing him that you're comfortable with Cabinet considering the paper

as long as there is no change to the recs relating to engagement (*recs 38-39*), Treaty protections (*rec 35*) and your participation in the group of delegated Ministers (*rec 5*).

- Recommend to Minister Bishop letters to PSGEs are sent post Cabinet on 23 January.
- Note to Minister Bishop that Te Arawhiti should be a part of engagement approach delivered by other agencies.

Please let us know if anything further is required.

Ngā mihi



Sereana Perry She/her
SENIOR ADVISOR

CELL: [REDACTED] **S9(2)(a)**
WEB: tearawhiti.govt.nz

The Office for Māori Crown Relations – Te Arawhiti
Level 3, Justice Centre, 19 Aitken Street, SX10111, Wellington 6011

From: Joana Johnston <Joana.Johnston@parliament.govt.nz>
Sent: Wednesday, 17 January 2024 7:51 am
To: Mclauchlan, Kurt <Kurt.Mclauchlan@tearawhiti.govt.nz>
Cc: Te Arawhiti OCE <TeArawhitiOCE@tearawhiti.govt.nz>
Subject: RESPONSE PLEASE: Fast Track Consenting

Anei Kurt

Cc'ing OCE and coming straight to you in the interests of time.

Kurt, can you please review and send me an email with embedded bullets if you have any concerns. Equally, if there are key messages you want the minister to convey to his colleague, embed them too.

Can I please also have an explanation of Rec 5, so I can explain to the minister what the implications are for him ie. what does he need to do and by when.

And can I have this all by 12pm please Kurt, and OCE please ensure Lil's sighted on anything before it comes to me.

Thank you! Ring me if you want to korero

JJ

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From: Melanie Quintela <Melanie.Quintela@parliament.govt.nz>
Sent: Wednesday, January 17, 2024 7:34:39 AM
To: #Office of Tama Potaka <#OfficeofTamaPotaka@parliament.govt.nz>
Subject: FEEDBACK: Fast Track Consenting

Hi all,

Please see the attached Fast Track Consenting for your review and feedback.

Feedback is due to the Advisors by 2 pm today.

Thanks,
Melanie

From: Joshua Smith <Joshua.Smith@parliament.govt.nz>
Sent: Tuesday, January 16, 2024 6:58 PM
To: #SPS All <SPSAll@parliament.govt.nz>

Subject: Ministerial Consultation: Fast Track Consenting

Good evening all,

Hon Chris Bishop, the Minister for RMA Reform, has approved circulation of the attached paper for Ministerial consultation for **feedback by 10:00am Thursday 18 January**. We apologise for the tight timeframe, but we hope to take the paper to Cabinet next Tuesday.

If you could pass this on to the relevant person in your office, that would be appreciated.

Many thanks,



Joshua Smith

Ministerial Advisor | Office of Hon Chris Bishop
Minister of Housing | Minister for Infrastructure |
Minister for Sports & Recreation | Minister Responsible for RMA Reform |
Associate Minister of Finance | Leader of the House | Member for Hutt South |

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Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

Authorised by Hon Chris Bishop, Parliament Buildings, Wellington

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Aide Memoire

To	Hon Tama Potaka Minister for Māori Crown Relations: Te Arawhiti	File no.
From	Warren Fraser Deputy Chief Executive, Strategy, Policy and Legal [REDACTED] S9(2)(a)	Report no. 2023/2024 - 126
cc.	Hon Paul Goldsmith	
Date	19 January 2024	
Title	Cabinet 24 January 2024: Fast-Track Consenting	

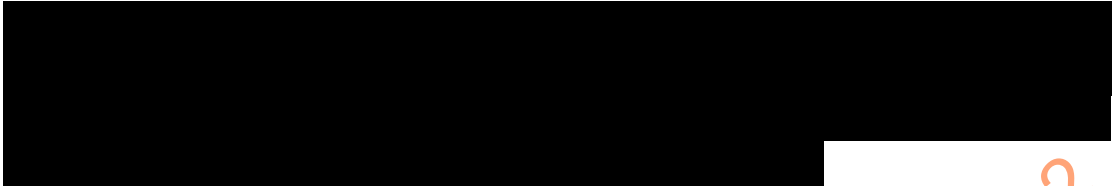
Purpose

1. To alert you to late, significant changes to the fast-track consenting paper Cabinet will consider on 24 January and to recommend you seek modifications to the paper at Cabinet.

Comment

2. On 16 January you were consulted by Minister Bishop's office on a draft paper titled 'A permanent fast-track consenting regime for regional and national projects of significance' (the Cabinet paper). On 17 January we advised we had secured, through agency consultation, protections for Treaty settlements and other Treaty-related obligations, engagement with post-settlement governance entities and other Māori organisations, and a role for you in a group of Ministers with delegated responsibility for future policy decisions.
3. The version lodged for Cabinet on 24 January, however, differs significantly from the version circulated for Ministerial consultation. In particular, it now proposes to expand the scope of approvals under the process, beyond those required by the RMA, so that the legislation is a 'one-stop shop' for other approvals under other – unspecified – legislation [see rec 9].
4. We understand these other approvals may include matters under the Wildlife Act 1953, the Heritage New Zealand Pouhere Taonga Act 2014, the Conservation Act 1987, the Public Works Act 1981 and the Crown Minerals Act 1991.
5. This is a problem because Treaty settlements and takutai moana recognise Māori rights under these additional Acts. The targeted engagement with Māori on the bill [recommendations 39 and 40] would be undermined significantly as the precise scope of the proposed legislation is not known and cannot be communicated in good faith. They would be unable to provide meaningful input on proposals that are anticipated in recommendation 9 to expand, but in unknown ways. There is already very little time for engagement if the Bill is to be introduced in March.
6. We therefore recommend you seek your colleagues' agreement to limit the fast track regime to approvals under the RMA only. This can be achieved by deleting recommendation 9.
7. To support you, we have attached suggested talking points in Appendix 1.

Appendix 1: Talking points for the MfMCR for Cabinet on 24 January 2024 in relation to A permanent fast-track consenting regime for regional and national projects of significance

- 
- While we're moving fast we've agreed to engage on our proposals [recs 29 and 30].
- But for that engagement to be meaningful Māori need to know the scope of our proposals. Rec 9 makes this uncertain.
- How will Māori know if their interests in, say, conservation matters, are affected by this legislation if we can't yet say conservation is part of the 'one-stop shop'?
Rec 9 should be deleted.

S9(2)(g)(i)

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From: Taylor, Benedict
To: Joana Johnston
Cc: Te Arawhiti OCE; Grant, John; Fraser, Warren; Sargent, Melanie; McLauchlan, Kurt
Subject: RE: TIME CHANGE- ADVICE PLEASE: MFE BRF-4115 / MBIE # 2324-1800 Fast-track legislation delegated decisions Paper #1
Date: Wednesday, 7 February 2024 2:58:00 pm
Attachments: image001.jpg
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Kia ora JJ

As requested here are our comments for Minister Potaka on the MfE briefing of 5 Feb 2024, *Fast-track legislation delegated decisions Paper #1*.

The briefing seeks a first tranche of policy decisions required to establish a new one-stop shop fast track consenting system. The government has committed to introducing the necessary legislation in its first 100 days – i.e. by 7 March.

Appendix 1: Table A – key policy questions sets out the main decisions. More detailed decisions for drafting (*Table B*) are proposed to be delegated to the Minister Responsible for RMA Reform. The table below sets out our advice on the recommendations in *Table A*. Our opportunity to contribute to the analysis has been limited given the condensed timeframes for this advice.

Proposal	Comments	Recommendation
<i>I – the purpose of the legislation</i>	<ul style="list-style-type: none"> Option A is preferable because it maintains a link to the purpose of the RMA which provides some protection for Māori rights and interests and flows through Treaty settlement arrangements while still supporting Māori development aspirations. This option, with its reference to projects with local benefits risks overloading the system with too many projects but this can be managed through tight eligibility criteria (see below). 	Support Option A subject to: <ul style="list-style-type: none"> no weakening of Treaty protections in proposals IV and V below; and excluding the Conservation Act 1987 from the one-stop shop (see proposal II).
<i>II – other approvals included in the FTC Bill</i>	<ul style="list-style-type: none"> We have previously advised on risks associated with including additional approvals beyond the RMA, especially in relation to settlements. [REDACTED] This risk is particularly acute for the Conservation Act 1987 which interacts extensively with Treaty settlements. These risks can be better managed if the additional approvals are similar in nature to the RMA – i.e. focussed on managing environmental effects that commonly arise with major infrastructure projects – i.e. Wildlife Act 1953 and Heritage New Zealand Pouhere Taonga Act 2014. The Crown Minerals Act 1991 and the (Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 and the Public Works Act 1991 deal with different kinds of rights and/or are less relevant for major infrastructure projects. In any case it is not possible in the timeframe to develop appropriate Treaty safeguards for all the Acts mentioned 	Do not oppose the inclusion in the Bill of <ul style="list-style-type: none"> the Wildlife Act 1963 (<i>rec b</i>); and the Heritage New Zealand Pouhere Taonga Act 2014 (<i>rec c</i>). Oppose the inclusion in the Bill of <ul style="list-style-type: none"> the Conservation Act 1987 (<i>rec a</i>); the (Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (<i>rec d</i>); and Crown Minerals Act 1991 (<i>rec e</i>). Oppose the proposed further work on the Public Works Act 1991.
<i>III – Weighting of FTC Bill in purpose in making decisions under other Acts</i>	<ul style="list-style-type: none"> The more the FTC Bill moves away from the purposes of the other Acts and their associated frameworks for decision-making the more complicated the task of upholding settlements because they were created in the context of those other Acts and their decision-making processes. The most effective and quickest way to mitigate this risk would be for the FTC Bill to focus only on process – i.e. faster timeframes for getting decisions under the existing statutory tests However we understand Ministers also want the FTC Bill to deliver greater certainty of approvals being granted – i.e. changing the tests. In these circumstances, using the precedents noted may help address the risk. 	Do not agree that the purpose of the FTC Bill is to be weighted above the other Acts in the one-stop shop.
<i>IV – eligibility criteria</i>	<ul style="list-style-type: none"> These criteria provide important safeguards and should be supported. Of particular importance for Māori Crown relations are <ul style="list-style-type: none"> Point f) in the list of matters the Minister must consider, relating to sufficient information being provided by the applicant. In order to access the benefits provided by the fast track process applicants will need to provide high quality information at the outset, including information on engagement with Māori and how relevant Māori interests have been identified and addressed; and point a) in the list of matters Ministers may consider because there is likely to have been engagement with Māori communities on projects identified in these ways. 	Support the recommended eligibility criteria.
<i>V – projects that would be ineligible</i>	<ul style="list-style-type: none"> The ineligibility conditions proposed provide important protections for categories of land in which Māori have strong rights and interests including Treaty settlement land, takutai moana areas and whenua Māori (see page 2 of table B for more on identified Māori land) 	Support the recommended ineligibility conditions.
<i>VI – what does the fast-track process do and who gets to make decisions</i>	<ul style="list-style-type: none"> Rec 17 a) is an important safeguard for protecting Treaty settlements 	Support the recommended grounds for Expert Panels to decline non-listed projects.
<i>VII – listed projects</i>	<ul style="list-style-type: none"> Listing projects in the legislation can provide additional certainty they will be approved but it can heighten risk to Treaty settlements which provide a role for iwi representatives in deciding whether or not approvals should be issued – e.g. the Waikato River settlement. Listed projects therefore require strong Treaty analysis and engagement with Māori as noted in the MfE briefing. 	N/A

Other aspects of the briefing you may wish to note include:

- [REDACTED] Out of Scope

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

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TALKING POINTS FOR FAST-TRACK CONSENTING BILL MINISTERIAL HUI, 15 FEBRUARY 2024

UPHOLDING TREATY SETTLEMENTS AND OTHER ARRANGEMENTS

- Cabinet agreed on 23 January 2024 that we must include protections for Treaty settlements, MACA/Takutai Moana rights, and other arrangements with Māori in the FTC Bill.
- This is also consistent with our coalition arrangements.
- Last week we challenged officials to square that commitment with the changes we're making to turn the dial clearly towards development, to include approvals in a one-stop shop, and to wrap that into a fast-track consenting process
- I think they've done a good job with the options in front of us.
 - I can see how each of the options might support our work. And how the other options each have drawbacks to them.
 - I can see how the recommended option, Option A, best suits our purposes in a clean and tidy way that is in one place and not scattered throughout the Bill.
- **I support Option A because it gives a strong, upfront statement of our cabinet endorsed policy**
- It's also clear on the tricky point of a one-stop shop dealing with different tests in different legislation – the same tests will apply in the FTC Bill as the in-scope legislation itself. This will save us huge amounts of time trying to work this all out.
- This all lines up with our imperatives of a purpose statement favouring development and the fast-track timeframes speeding up approvals
- Iwi Chairs wrote to us yesterday raising a number of concerns. The first is the greater weighting to development. The second is the protection of the

matters covered largely by Option A. We wont walk back from the weighting issue but I think option A de-risks their second issues clearly and up front. [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

S9(2)(g)(i)

- It also provides strong signals to developers about the work they need to do with iwi if they want to be fast-track ready. I think this is a point we need to be communicating both through the bill's provisions and more generally
- It is worth noting that in the recent fast track process, the following stats apply:
 - **At least 136 applications** were made under the COVID-19 Recovery (Fast-Track Consenting) Act 2020
 - **Only 6 of these were declined – none as a result of inconsistency with Treaty principles of Treaty settlements.**
 - **At least 15 applications were significant for Māori – only two of these were opposed by Maori. All are either approved or in progress** except one – the Ngāi Tahu Hananui aquaculture application. In that instance the panel declined on the grounds of negative environmental effects.
- On this basis, I think Option A is the way to go. Does anyone have a different view? Or shall we move to the Conservation matters?

Aide Memoire

To	Hon Tama Potaka Minister for Māori Crown Relations: Te Arawhiti	File no. DTS-09-02
From	Lil Anderson Tumu Whakarae The Office of Māori Crown Relations – Te Arawhiti [REDACTED] S9(2)(a)	Report no. 2023/2024 - 148
Date	16 February 2024	
Title	Hui with Pou Taiao on the fast-track consenting regime	

Purpose

1. This aide memoire provides you with information to support your convening of a hui with National Iwi Chairs Forum Pou Taiao, in the week of 19 February (tentative) on changes to the resource management laws and the establishment of a new fast-track consenting regime.
2. We understand Pahia Turia (Pou Taiao Chair), Tukoroirangi (Tuku) Morgan and other Chairs will attend the hui in person, with others joining online, subject to date confirmation.
3. Lil Anderson, Tumu Whakarae, The Office of Māori Crown Relations – Te Arawhiti will attend.

The hui

4. You have undertaken to convene the hui in your role as Minister for Māori Crown Relations: Te Arawhiti with the National Iwi Chairs Forum (**NICF**). You are also one of four Ministers with delegated decision-making responsibilities on the new fast-track consenting regime, alongside Ministers Bishop, Jones, and Brown.
5. At the hui, Minister Bishop will step through the policy. You may wish to speak to the points raised by Pou Taiao in consideration of the overall relationship and the implications on Treaty settlements.
6. You will be forwarded, from Minister Bishop's office, a briefing outlining the policy decisions made, or decisions underway, on the establishment of a new fast-track consenting regime. This aide memoire precedes policy decisions being made, therefore both pieces of advice should be read together.
7. The following information is also included as Appendices:
 - suggested talking points (**Appendix 1**); and
 - letters from the National Iwi Chairs Forum to Ministers, received on 05 February and 14 February (**Appendix 2**).

Background

8. In the first phase of the government's reform of the resource management system, the Government repealed the Natural and Built Environment and Spatial Planning Acts. Phase two

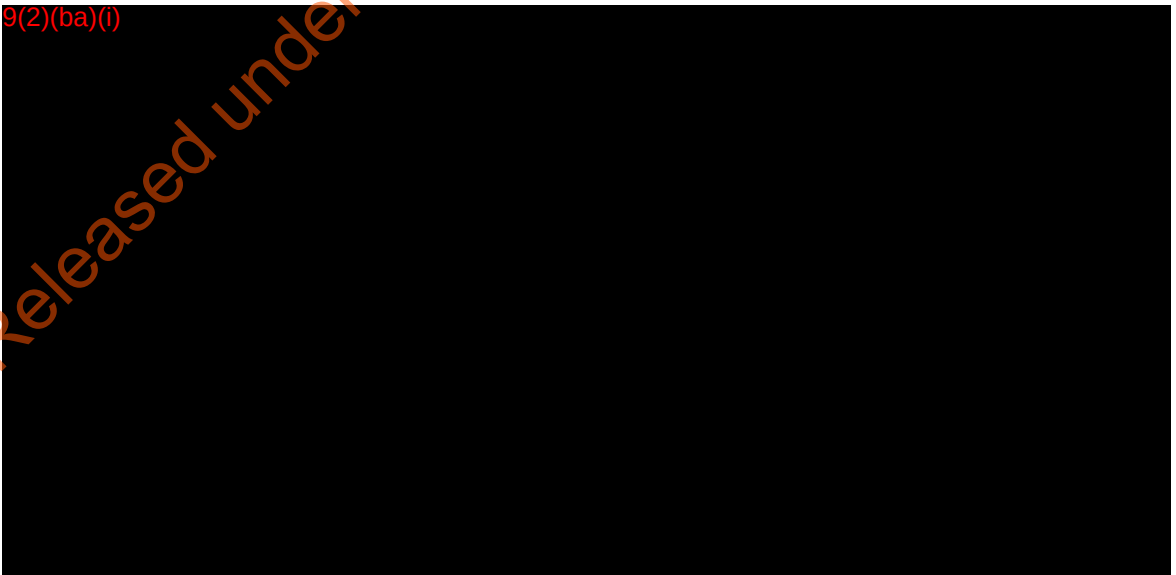
of the RMA reform includes introducing a permanent fast-track consenting regime to improve the speed and process for resource approvals for major infrastructure projects. These changes are part of the 100 Day Action Plan.

9. On 23 January 2024, Cabinet agreed [CAB-24-MIN-0008] to develop this new, permanent fast-track consenting regime aimed at enabling infrastructure and other projects that have significant local, regional and national benefits.
10. Cabinet authorised delegated Ministers to jointly make further detailed decisions on policy for the Fast Track Consenting Bill (**FTC Bill**). Cabinet proposals on fast-track consenting are intended to improve decision making timeframes and give greater investment certainty, with well-designed projects having a clear and fast path to consent.
11. The policy decisions made on the FTC Bill are significant for Māori in terms of the protection of Treaty settlements. Cabinet has agreed that Treaty settlements, takutai moana interests and other arrangements are one aspect of broader Treaty issues that will be protected through this work.

Letters from the NICF noting their concerns

12. Following the Quarterly hui with NICF in Kerikeri on Friday 2 February, NICF wrote to the Prime Minister (letter dated 5 February), acknowledging the attendance at the quarterly hui and putting their commitments and next steps in writing. A copy of the letter is attached (see Appendix 3).
13. With regard to Pou Taiao the key matters raised were:
 - a) Re-stating their opposition to any legislation or policy change which erodes the obligations of Iwi Māori to their natural environment, Te Tiriti o Waitangi and rights and interests regarding taonga.
 - b) Noting the immediate priority is urgent engagement to introduce new Fast Track Consenting legislation by 8 March, and to begin a longer process of RM reform.

14. 9(2)(ba)(i)



Initial comment

15. Treaty settlements and other arrangements are one aspect of broader Treaty issues that Cabinet has agreed will be protected.

16. The concerns raised by Pou Taiao reflect a concern about the interaction of environmental concerns and development. Many Treaty settlement obligations have cumulative provisions which consider these issues and the balance of interests to be considered.
17. Meeting its commitment to include protection for Treaty settlements and other arrangements requires the Government to:
 - ensure PSGEs and other representative groups have an equivalent degree of influence under the FTC Bill as they otherwise would have under the RMA and other legislation by virtue of their Treaty settlement or other arrangement; and
 - engage meaningfully with affected groups on the development of the FTC Bill on how settlements and other arrangements will be upheld.
18. This will be critical in addressing the concerns raised by Pou Taiao, and to supporting the durability of Treaty settlements more generally.
19. To date, the policy work supporting the advice to Ministers has been developed at pace and has involved limited engagement and discussion with only a few Māori groups.
20. We understand policy decisions will be considered on 18 February. Once these are made, we will provide further information on potential implications for the issues raised by Pou Taiao and Treaty settlements more generally, along with updated talking points.

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21. It is recommended you:

- Nāku noa, nā

Tumu Whakarae

The Office for Māori Crown Relations – Te Arawhiti

NOTED / APPROVED / NOT APPROVED
Hon Tama Potaka Minister for Māori Crown Relations: Te Arawhiti
Date: / / 2024

Appendix 1: Suggested talking points

Hui with Pou Taiao

Opening comments

- Thanks for meeting with us today – this is an important kaupapa.
- We have received your letter of 14 February setting out your concerns and comments.
- I also note the letter from NICF to the Prime Minister following the Quarterly hui on 2 February. The letters have consistent overall themes in terms of concerns about upholding Treaty settlements, but also protection of te taiao.
- We wanted to be open with you about how we are progressing the resource management reforms.
- This hui is a chance for Minister Bishop to share our policy thinking on the fast-track consenting regime with you, and for us to listen to your views on it.

Discussion

- I'll now hand over first to Minister Bishop to say something about where things are at in terms of the changes to the resource management laws and the establishment of a fast-track consenting regime.

...

- It would be useful for us now to hear from you.

Closing comments

- We're committed to upholding Treaty settlements as we make improvements to the resource management system and this has been a really useful hui – thank you for sharing your thoughts.
- We've made notes of what we've heard today and agencies will be following up as appropriate.

Appendix 2: Letters from the National Iwi Chairs Forum, 05 February, 14 February 2024
(attached)

9(2)(ba)(i)

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9(2)(ba)(i)

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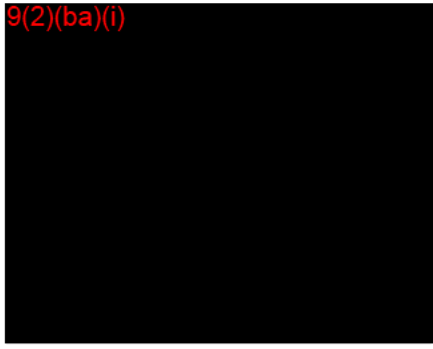
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9(2)(ba)(i)



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Aide Memoire

To	Hon Tama Potaka Minister for Māori Crown Relations: Te Arawhiti	File no. DTS-09-02
From	Lil Anderson Tumu Whakarae The Office for Māori Crown Relations – Te Arawhiti Ph: [REDACTED] S9(2)(a)	Report no. 2023/2024 - 152
Date	16 February 2024	
Title	Hui with Ngāi Tahu on the fast-track consenting regime – 19 February 2024	

Purpose

1. This aide memoire provides you with background information and talking points (**Appendix 1**) for a hui with Ngāi Tahu, scheduled for Monday 19 February from 1.15pm-2.00pm, in the office of Hon Chris Bishop.
2. The focus of the hui will be to discuss changes to the resource management laws and the establishment of a new fast-track consenting regime. Lil Anderson is available to attend the hui with you.
3. You have received advice from Ministry for the Environment (MfE) on the views of Ngāi Tahu on the fast-track consenting regime.
4. You will receive further advice from Te Arawhiti on the implications of the regime on treaty settlements. This will be provided to you following your hui with fellow decision-making Ministers on Sunday night.

The hui

5. You will have a facilitating role at the hui and may wish to speak to the implications on Treaty settlements. Information on potential implications is included further on in the briefing.
6. The Minister Responsible for the Resource Management Act (**RMA**) Reforms, Hon Chris Bishop, will also attend and play a key role. Minister Bishop will step through the policy.
7. Representatives of Ngāi Tahu attending the hui are as follows:
 - a. Justin Tipa – Kaiwhakahaere, Te Rūnanga o Ngāi Tahu
 - b. Te Maire Tau – Co-Chair, Te Kura Taka Pini (Ngāi Tahu Freshwater Entity)
 - c. Gabrielle Huria – CEO, Te Kura Taka Pini
 - d. [REDACTED] – Senior Strategy Advisor, Te Rūnanga o Ngāi Tahu S9(2)(a)
 - e. [REDACTED] Senior Advisor to the Kaiwhakahaere, Te Rūnanga o Ngāi Tahu
8. You will be forwarded a briefing from the Minister Responsible for RMA reforms which outlines the policy decisions made on the new fast-track consenting regime. You will also receive further

advice from Te Arawhiti with information on policy decisions following your meeting with Ministers on Sunday night. This aide memoire precedes policy decisions being made. Therefore, all pieces of advice should be read together.

Background

9. You are one of four Ministers with delegated decision-making responsibilities on the new fast-track consenting regime (alongside Ministers Bishop, Jones, and Brown).
10. In the first phase of the Government's reform of the resource management system, the Government repealed the Natural and Built Environment and Spatial Planning Acts. Phase two of the RMA reform includes introducing a permanent fast-track consenting regime to improve the speed and process for resource approvals for major infrastructure projects. These changes are part of the 100 Day Action Plan.
11. On 23 January 2024, Cabinet agreed [CAB-24-MIN-0008] to develop this new, permanent fast-track consenting regime aimed at enabling infrastructure and other projects that have significant local, regional, and national benefits.
12. Cabinet authorised delegated Ministers to jointly make further detailed decisions on policy for the Fast-track Consenting bill (**FTC bill**). The Cabinet proposals on fast-track consenting are intended to improve decision making timeframes and give greater investment certainty, with well-designed projects having a clear and fast path to consent.
13. The policy decisions made on the FTC bill are significant for Māori in terms of the protection of Treaty settlements. Treaty settlements, takutai moana interests and other arrangements are one aspect of broader Treaty issues that Cabinet has agreed will be protected through this work.

Ngāi Tahu – Crown relationship

14. In January you met with Ngāi Tahu in Christchurch in your roles as Minister for Māori Crown Relations: Te Arawhiti and Minister for Māori Development. The focus of the hui was the wider Ngāi Tahu – Crown relationship.
15. Justin Tipa was appointed Kaiwhakahaere (Chair) of Te Rūnanga o Ngāi in 2023 and represents Moeraki. Arihia Bennett (Ngāi Tahu, Ngāti Porou, Ngāpuhi) announced that she would be resigning from her role as Chief Executive in January. A yet-to-be-determined interim chief executive will take over in March, until a permanent replacement is appointed later this year.
16. Ngāi Tahu have capacity and capability to engage with the Crown on policy reform in a way some iwi do not. Engagement is often directly with Ministers or department chief executives.
17. At a community level Ngāi Tahu are represented through 18 Rūnaka/Rūnanga who each appoint a tribal member to represent their interests at Te Rūnanga.

Ngāi Tahu and natural resources

18. In 2023, the MfE was intensively engaged with Te Rūnanga over RMA reforms.
19. Being one of the earliest settlements of historical claims in 1998, the Ngāi Tahu Treaty settlement does not contain detailed governance arrangements over natural resources more typical of later settlements. Ngāi Tahu has therefore sought to develop these arrangements with central, regional, and local government, post-settlement and on specific kaupapa.

S9(2)(g)(i)

20. Any reduction of arrangements reached will likely be a point of concern for Ngāi Tahu.

Other engagements

21. Other upcoming engagements on fast-track consenting include:
- meeting with Pou Taiao, anticipated to be scheduled in the week of 19 February; and
 - meeting with Te Tai Kaha (comprised of representation from Federation of Māori Authorities, NZ Māori Council, and Wai Māori Trust) on Thursday 22 February, 10.45-11.15am.
22. We are advised that Minister Bishop also wrote to PSGEs (dated 31 January) and other relevant representative groups regarding the Government's plan to develop fast-track consenting legislation and introduce changes to the National Policy Statement for Freshwater Management this year.
23. MfE officials have been engaging with PSGEs and other groups on the fast-track proposals, having met with approximately 47 PSGEs regarding fast-track to date.
24. MfE have also indicated that Waikato-Tainui, Ngā Tangata Tiaki, Raukawa, Ngātiwai, and Te Arawa Lakes Trust have all requested to meet with Minister Bishop to discuss the fast-track regime.
25. Furthermore, you may also be asked to support engagement with iwi and hapū who are yet to settle their Treaty claims and have not reached a deed of settlement with the Crown, entities created through settlements who are not PSGEs, and groups who have natural resource arrangements outside of settlement. We will provide separate background briefings once these hui are confirmed as progressing.

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26. It is recommended you:

- Nāku noa, nā

Tumu Whakarae

The Office for Māori Crown Relations – Te Arawhiti

NOTED / APPROVED / NOT APPROVED
Hon Tama Potaka Minister for Māori Crown Relations: Te Arawhiti
Date: / / 2024

Appendix 1: Suggested talking points for hui with Ngāi Tahu

Hui with representatives of Ngāi Tahu

Opening comments

- Thanks first for meeting me with January. I thought it was a productive hui.
- Thanks too for meeting with us today – this is an important kaupapa.
- We wanted to be open with you about how we are progressing the resource management reforms.
- This hui is a chance for Minister Bishop to share our policy thinking on the fast-track consenting regime, and for us to listen to your views.

Discussion

- I'll now hand over to Minister Bishop to talk about where things are at in terms of the changes and the establishment of a fast-track consenting regime.

[Minister Bishop to speak]

- It would be useful for us now to hear from you.

Closing comments

- We're committed to upholding Treaty settlements as we make improvements to the resource management system.
- This has been a really useful hui – thank you for sharing your thoughts.
- We've made notes of what we've heard today and agencies will be following up as appropriate.

To	Hon Chris Bishop Minister of Housing Minister for Infrastructure Minister Responsible for RMA Reform Hon Tama Potaka Minister of Conservation Minister for Māori Crown Relations: Te Arawhiti Hon Shane Jones Minister for Oceans and Fisheries Minister for Regional Development Minister for Resources	File no. XXX
Cc	Hon Simeon Brown Minister for Energy Minister of Local Government Minister of Transport	
Date	17 February 2024	Report no. 2023/2024 - XXX
Title	Fast-track bill delegated decisions: Treaty package	

Purpose

1. This brief is to support the ministerial meeting on 18 February to make delegated decisions on a package of measures for the Fast Track Consenting bill ("FTC bill") that uphold Treaty of Waitangi settlements and other legislative arrangements [CAB-24-Min-008 at 35].
2. It provides background and context to your decisions by recalling briefly:
 - the principal ways in which Treaty settlements intersect with consenting and other approvals the subject of the bill;
 - what we know about Māori involvement in infrastructure projects generally and, more specifically, about Māori involvement in the COVID-19 Recovery (Fast-Track Consenting) Act; and
 - some context around the ways iwi Māori may be able to support and enhance a Fast Track regime.
3. It outlines the 'Treaty package' for the FTC bill which consists of:
 - 'architectural' decisions ministers have taken to date relevant to Treaty considerations;

- decisions to be taken at your 18 February hui principally concerning whether or not you want the bill to also contain an upfront visible representation of Cabinet's commitment on Treaty settlements and other arrangements; and
- detailed 'procedural' decisions pending as recommended in BRF-4239 Tranche 2B sent to Ministers on 16 February or deferred from previous meetings.

Background

How do Treaty Settlements, Takutai Moana and other arrangements intersect with consenting and other approvals?

4. There are 75 enacted Treaty settlements and a further 25 deeds of settlement awaiting settlement legislation. The coalition Government has agreed to honour all of these settlements, not parts thereof.
5. While land returned under Treaty settlements is important to protect, land represents only part of the key settlement redress that needs to be upheld through the fast-track process. Other elements of Treaty settlements already legislated relate to increased roles and influence for iwi in RMA planning, consent decision-making and other processes, including approvals under in-scope legislation like the Conservation Act or Wildlife Act. Almost all settlements include such mechanisms, particularly in order to give effect to Article 2 of the Treaty and redress historic failings by the Crown and its agents to observe Article 2 in the management of natural resources.
6. There are many layers of Treaty settlement redress and a spectrum from relatively straightforward mechanisms (such as Statutory Acknowledgements and Deeds of Recognition) through to highly complex and multi-layered redress (such as the Waikato River arrangements) that impact upon both the RMA and Conservation frameworks.
7. Some examples of relevant RMA and Conservation Treaty settlement redress include:
 - mechanisms that provide for influence on RMA policy statements and plans (eg there may be a set of statutory values or the iwi may prepare a statutory document that must be given legal effect in RMA plans) which in turn have a strong influence on RMA consenting processes;
 - mechanisms such as overlay classifications, which require Conservation Boards and the New Zealand Conservation Authority to have particular regard to the values in developing and approving Conservation Management Strategies or Plans, the Minister of Conservation to avoid harming specified values, and the Director-General to take action on agreed protection principles which can include consultation with iwi and particular regard had to their views on significant activity;
 - joint entities that prepare documents to impact on RMA planning processes, and those entities can participate in resource consent processes (there are around 12 of these entities: Lake Taupo; 90 Mile beach; Kaituna River; Hauraki; and over a number of other rivers and other areas), or authorship by the PSGE or joint bodies of parts or the whole of Conservation Management Strategies or Plans and approval of statutory plans, which in turn have an effect on the consideration of concession decision-making;
 - specific roles for iwi in council planning / consenting committees, which means they make direct decisions on RMA regional policy statements and plans [Hawkes' Bay Regional Planning Committee; Wellington (Te Upoko Taiao)], and specific nominations by iwi to Conservation

Boards and the New Zealand Conservation Authority, which enable some influence in the conservation public governance model through setting direction for DOC decision-making in Conservation General Policies, Conservation Management Strategies, and Conservation Management Plans – which set rules and constraints on activities allowed which all approvals *must comply with* outside of the Fast Track regime

- joint management agreements and mana whakahono: these Treaty settlement or related agreements provide specific roles for iwi in consenting processes (e.g. Waikato River joint management agreements; Ngāti Porou joint management agreement; Ngāi Tahu mana whakahono a rohe agreement), and joint governance, management or advisory bodies with DOC over Crown-owned public conservation land, including delegated decision-making from the Minister of Conservation
 - specific roles for PSGEs in RMA consenting processes (eg the right to appoint or recommend a hearing commissioner);
 - decision-making redress between DOC and PSGEs that provide for an active involvement of the PSGE in DOC statutory decision-making and a stepped out and iterative process to ensure iwi interests are understood;
 - statutory acknowledgements provide rights for iwi to be considered an affected party for resource consent processes and also have an impact in Heritage NZ processes (almost all Treaty settlements include statutory acknowledgements);
 - deeds of recognition, which include a commitment by the Director General and Minister of Conservation to consult iwi and that they must have regard to their views on specified matters, including concessions.
8. All of these Treaty settlement mechanisms were developed in the context of the RMA planning hierarchy and consenting processes in place at the time (including Part 2 of the RMA) and on the understanding that RMA policy statements and plans would have a strong influence on RMA consenting. Likewise on the mechanisms for redress developed in the context of the Conservation Act and its plans and processes and other in-scope legislation.
9. In light of the depth of these settlement commitments, and in order to meet Cabinet's direction [CAB-24-Min-008 at 35], it will be key for the FTC bill that, to the extent the new legislation modifies those underlying regimes (e.g. by speeding up processes/shortening timeframes; or by giving primacy to a developmental purpose; or making planning documents subservient to that purpose), it also provides ways to give iwi equivalent rights and protections as they expected through their settlements.
10. The Marine and Coastal Area (Takutai Moana) and Nga Hapū o Ngāti Porou legislation provide a statutory test for the recognition of Māori customary rights. If Māori applicants are granted customary marine title (CMT), they have a direct say on whether or not resource consents can be granted in the common marine and coastal area covered by that title, though this is subject to the accommodated activities and accommodated infrastructure provisions in sections 64 and 65 of the Takutai Moana Act.
11. The Acts also contain the means to achieve other fast-track relevant protections for wahi tapu sites and the ability to influence planning documents.
12. In the High Court cases where decisions have been made to grant CMT:

- Not every applicant group has been successful;
 - The areas of CMT awarded have generally been significantly less than that claimed (though one exception is the award pending over Tauranga Harbour); and
 - A number of the awards are under appeal either by other applicants or by the Crown or both.
13. To date, there are 19 recognition orders or agreements giving effect to a grant of CMT – one over the Titi Islands and 18 in respect of ngā hapū o Ngāti Porou.
14. The Coalition Government has also committed to amend the test for CMT to better align with Parliament's original intent – that there is a very high bar to meet the test (so that, consequently, it is expected there would be relatively few areas of coastline subject to CMT).

What do we know of Māori involvement in infrastructure projects generally and about Māori involvement in the COVID-19 Recovery (Fast-Track Consenting) Act specifically?

15. There is sometimes a misperception that Māori involvement in consenting processes is *always* likely to be obstructive and contributes to delays and high costs for those seeking consents.
16. Māori are involved in small to medium scale infrastructure projects through:
- ownership (of the land on which infrastructure is located, the infrastructure itself or shares or other rights in infrastructure providers);
 - other investment in infrastructure (including funding and financing); direct participation by individuals and businesses in the infrastructure workforce;
 - other direct participation in the development or ongoing management of infrastructure either solely by a Māori group or in collaboration with other entities.¹
17. Recent experience with the COVID-19 Recovery (Fast-Track Consenting) Act also demonstrates that any perception that Māori involvement in consenting is always an obstacle is unfounded. As shown below, Māori were more likely to seek fast-track consents than to oppose them and, of the only 6 applications declined, none were declined on Treaty-related grounds.
18. Of the no fewer than 136 fast-track applications that were made —
- At least 15 applications were significant for Māori. All are either approved or in progress except one – the Ngāi Tahu Hananui aquaculture application. In that instance the panel declined on the grounds of negative environmental effects
 - Two of the 15 applications in which there was a significant Māori interest were opposed by iwi/Māori –
 - the Kapuni Green Hydrogen project in Taranaki, which was subject to judicial review and the hapū is now taking its concerns to the United Nations (note some Māori supported the project too); and
 - the Botanic Riverhead where Ngāti Paoa Trust Board unsuccessfully sought judicial review of a panel membership decision

¹ New Zealand Infrastructure Commission State of Play - Māori Engagement in Infrastructure What does the literature say?, 2023

- At least six applications were successful at least in part because of considerations given to Treaty principles, Treaty settlements and broader Māori rights and interests: Whakatāne Commercial Boat Harbour, Ōtaki Māori Racecourse Development, Tāheke Geothermal, the Ngāūranga to Petone shared path, and papakāinga developments in Kaitiāia and Rāpaki, Christchurch
 - Only 6 were declined: none as a result of inconsistency with Treaty principles or Treaty settlements (although some projects were not referred by the Minister to a panel because of Treaty issues).
19. Relevant to ministers' decisions on a Treaty package for the FTC bill is the signalling function the legislation will play for applicants. The relatively strong Treaty clause in the COVID-19 Recovery (Fast-track Consenting) Act 2020 will likely have incentivised applicants to work with iwi upfront, resulting in efficiency and effectiveness benefits, as demonstrated by the Ngāūranga to Petone shared path project.
20. There, upfront consultation by the New Zealand Transport Authority / Waka Kotahi resulted in the local mana whenua and the PSGEs with statutory acknowledgements in the area supporting the application. The expert panel found the project was not inconsistent with the principles of the Treaty or with Treaty settlements. That was one of the factors in the project being approved and successful even though there were countervailing factors, such as habitat loss.

21.



S9(2)(g)(i)

22. Solutions to these issues are wider than the FTC legislation and more fundamentally about the Conservation Act itself and the Treaty policy under it. We are working on that with Minister Potaka.
23. It is worth noting that there is significant opportunity in engaging and partnering with iwi Māori given their respective asset bases, access to land (both owned and through RFR) and interests in development and long-term lease/contractual arrangements with the Crown for infrastructure and housing. While these interests are not settlement protections per se, they do provide the Crown with an opportunity to partner with iwi if they are actively involved in the fast-track regime. This partnership could prove vital for nationally significant infrastructure when the Crown is looking for longevity.

The 'Treaty package' for the FTC legislation

24. Cabinet has agreed that the FTC legislation "will include protections for Treaty of Waitangi settlements and other legislative arrangements including under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hāpu o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements under the RMA" [CAB-24-Min-0008 at

35]. This decision is essential given the commitment within the National and New Zealand First Coalition agreement which states:

- The Coalition Government will honour the undertakings made by the Crown through past Treaty of Waitangi settlements.

25. The Treaty package of measures to provide these protections consists of:

- ‘architectural’ decisions ministers have taken to date relevant to Treaty considerations;
- decisions to be taken at your 18 February hui principally concerning whether or not you want the bill to also contain an upfront visible representation of Cabinet’s commitment on Treaty settlements and other arrangements; and
- detailed ‘procedural’ decisions pending as recommended in BRF-4239 Tranche 2B sent to Ministers on 16 February or deferred from previous meetings.

26. **Appendix One** to this brief provides an overview of the first two parts of the Treaty package – architectural decisions already taken and procedural decisions pending – to give ministers an overall sense of what is envisaged for the FTC bill in order to include the protections Cabinet has sought.

27. **Appendix Two** to this brief is a table of decisions we seek from ministers at their 18 February hui.

28. Key architectural decisions ministers have made for the FTC legislation are a mix of:

- modifications (in effect) to the strict terms of Treaty settlements; and
- protections for those settlements

29. For example, ministers have agreed that the purpose of the FTC Bill is generally to be weighted above the purpose and provisions of other Acts in the one stop shop. This, in effect, modifies the terms under which settlement redress was agreed. So too the imposition of strict timeframes for decision-making on fast-track projects, shifting decision-making to Ministers, and diminishing the weight given to parent legislation and planning documents (even if consideration of those documents is specifically provided for through the pending procedural decisions).

30. As for protections, ministers have agreed that an activity is ineligible for fast-track if it would occur on land returned under a Treaty settlement, or on certain other identified Māori land, or within a CMT area without agreement in writing from relevant landowners or rights holders. Ministers have also agreed that joint Ministers must decline a referral application if it would be inconsistent with a Treaty settlement or specified arrangement to refer it.

31. More detailed decisions pending are required to ensure that fast-track process requirements support upholding Treaty settlement and other arrangements by placing relevant requirements on applicants, Ministers, and the Expert Consenting Panel. See **Appendix One**, second column.

32. Some pending decisions deferred from previous ministerial meetings are aimed at providing iwi outcomes with ‘equivalent effect’ to settlement commitments, notwithstanding a FTC modification to the legislative scheme underpinning the redress. For example, ministers agreed to remove requirements to comply with general conservation policy, conservation management strategy, conservation management plan, or reserve management plan; but reserved decision

on whether this should be “except where this would undermine a Treaty settlement”. **Appendix Two** provides detail about what this means in practice and seeks final decisions on these points.

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Recommendations

33. It is recommended you:

- a. **note** Cabinet has agreed that the FTC legislation “will include protections for Treaty of Waitangi settlements and other legislative arrangements including under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hāpu o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements under the RMA” [CAB-24-Min-0008 at 35];
- b. **note** detailed ‘procedural’ decisions relevant to implementing Cabinet’s decision above have been recommended separately in BRF-4239 Tranche 2B sent to Ministers on 16 February;
- c. **note** this brief and its Appendices is designed to assist you to make all remaining policy decisions on a ‘Treaty package’;
- d. **indicate** your preferred options in the decisions table at Appendix Two.

Nāku noa, nā

 Lil Anderson Tumu Whakarae The Office for Māori Crown Relations – Te Arawhiti	James Palmer Secretary for the Environment Ministry for the Environment
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Ministers' Signatures

Rt Hon Chris BISHOP
Minister of Housing
Minister for Infrastructure
Minister Responsible for RMA Reform

Date

Hon Tama POTAKA
Minister of Conservation
Minister for Māori Crown Relations: Te
Arawhiti

Date

Hon Shane JONES
Minister for Oceans and Fisheries
Minister for Regional Development
Minister for Resources

Date

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Appendix One: Treaty Package of decisions taken and decisions pending for FTC legislation [as at 18 February 2024]

Legislative Outline	Confirmed decisions ¹	Decisions pending (per BRF-4239 Tranche 2B)
Requirements for applicants		
Eligibility criteria	An activity is ineligible if it: <ul style="list-style-type: none">would occur on land returned under a Treaty settlement, or Identified Māori land, without agreement in writing from relevant landowner(s);would occur in a customary marine or protected customary rights area without agreement from the rights holder/group;would occur on Māori customary land;would occur land set apart as Māori reservation under part 17 of Te Ture Whenua Māori Act 1993; andincludes an aquaculture activity or other incompatible activity that would occur within an aquaculture settlement area reserved through the Māori Commercial Aquaculture Claims Settlement Act 2004 (MCACSA), or identified within individual iwi settlements, or within the area under an authorisation issued through the MCACSA/RMA, unless the applicant holds the relevant authorization. Applicants will not be able to apply for a s61 access arrangement in an area excluded through the Minerals Programme at the request of iwi and hapū.	-
Engagement requirements	-	Applicants must engage with relevant iwi, hapū, Treaty settlement / related entities, applicant groups under the Marine and Coastal Area (Takutai Moana) Act 2011, ngā hapū o Ngāti Porou where relevant.
Information requirements	-	Applicants must include relevant information about Treaty settlements / specified arrangements, information identifying Māori parcels of land, marae and wāhi tapu within the project area, a record of engagement undertaken with parties above, and a cultural impact assessment prepared by or on behalf of the relevant iwi authorities.
Requirements for Minister(s)		
Inviting comment	If the Minister(s) receives an application, they must copy it to and invite comment from Treaty settlement / related entities, and in respect of Māori land, any Māori land administering entity and agents appointed by the Māori Land Court for the owners of a Māori land block that does not have an administering entity.	The Minister(s) must consult with relevant parties identified in the report on Treaty obligations.
Considering specified information	The Minister(s) must consider a report on Treaty obligations prepared by the administering agency setting out relevant information, a summary of comments received by the Minister, and the agency's advice on whether the referral application should be accepted.	The Minister(s) must consider relevant information in the application including the cultural impact assessment.
Grounds for referral to panel	The Minister(s) must decline the referral application if it would be inconsistent with a Treaty settlement or specified arrangement to refer it.	-
Giving effect to settlement arrangements and specified arrangements	-	<ul style="list-style-type: none">Where a Treaty settlement / specified arrangement provides for the consideration of a document (including statutory planning document), where relevant it must be given the same or equivalent effect.Where a Treaty settlement / specified arrangement provides for procedural matters, the Minister(s) must comply with those requirements where relevant.The Minister(s) must also direct the panel to comply with these matters where relevant.
Informing of decision	The administering agency must give notice of the decision to anyone invited to comment, and if the decision is to accept all or part of an application, the Minister must also give notice to relevant iwi authorities, Treaty settlement entities, and others.	The Minister(s) must notify relevant Māori land trusts, incorporations or agents appointed under Te Ture Whenua Māori Act 1993 of their decision.
Requirements for panel		
Inviting comment	-	The panel must invite comment from relevant Treaty settlement / related entities and any party identified in the report on Treaty obligations.
Giving effect to settlements and specified arrangements	If a Treaty settlement or specified arrangement includes procedural matters, including relating to the appointment of a decision-making body for hearings, the panel must comply with the relevant arrangements or obtain agreement from the relevant entity to adopt a modified arrangement, which must not be unreasonably withheld.	Where a Treaty settlement / specified arrangement provides for the consideration of a document (including statutory planning document), where relevant it must be given the same or equivalent effect.
Membership of panel	Panels must include one member nominated by the relevant iwi authorities.	-
Conditions	-	The panel can impose conditions specifically to recognise or protect Treaty settlements / specified arrangements and iwi / hapū with interests.
Specific matters		
Listing fast-track legislation in relevant settlements	-	The fast-track legislation will be included in the list of statutes relevant to Treaty settlement mechanisms in specific settlement legislation, subject to confirmation from the relevant Treaty settlement entities.
Recognising Te Ture Whaimana	-	The fast-track legislation will include a clause confirming the role of Te Ture Whaimana as the primary direction-setting document for the Waikato River (equivalent to section 104 of the Natural and Built Environment Act 2023, which was retained through the repeal process.

¹ In this Table Treaty settlements and specified arrangements is used as shorthand for Treaty settlements and other legislative arrangements Ministers have agreed to be protected (see CAB-24-Min-0008) including arrangements under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements under the RMA, as well as relevant Acts such as the Māori Commercial Aquaculture Claims Settlement Act 2014, the Ngā Mana Whenua o Tāmaki Makaurau Act 2014 and others. Likewise, Treaty settlement / related entities is used as shorthand for post-settlement governance entities and other relevant entities under the specified arrangements.

For discussion purposes only. - does not capture full policy.

Appendix 2: Table of further Treaty related decisions for 18 February ministerial hui

Proposal	Options and Recommendations	Decisions	Advice and Analysis S9(2)(h)
A. Subject to FTC legislation purpose, Treaty standards of in-scope legislation continue to apply	<p>1. Note section 4 of the Conservation Act requires that the Act (and Acts listed in Schedule 1 of that Act) be 'interpreted and administered as to give effect to the principles of the Treaty of Waitangi'.</p> <p>2. Note that Part 2 of the RMA provides, inter alia, that in exercising functions under the Act all persons 'shall take into account the principles of the Treaty of Waitangi'.</p> <p>3. [REDACTED] S9(2)(h)</p> <p>4. Agree that the current Treaty standards of in-scope legislation (section 8 of the RMA, section 4 of the Conservation Act, and section 4 of the CMA) would continue to apply in the Bill</p> <p>5. Agree that this will be explicitly included in the Bill alongside provisions making it clear that the purpose of the FTC Bill has primacy</p>	<p>Yes No</p> <p>Yes No</p>	<p>[REDACTED] It would be preferable from the point of view of system efficiency and good law to be clear about your intent on these matters for the Fast Track regime particularly given that the regime you have agreed to put in place through the Bill includes, for example, roles for DOC and MOC who are currently bound by s4.</p> <p>Decisions to date have included reference to Part 2 of the RMA as a matter which Ministers/Panel must have regard to, but with lesser weighting than the purpose of the FTC purpose and Act.</p> <p>Public conservation land not subject to Treaty settlements is still subject to s 4 of the Conservation Act for conservation decision-making (eg all concessions and permits), and many settlements refer to s 4. Section 4 has been described as the strongest form of Treaty clause on the statute books:</p> <ul style="list-style-type: none"> When DOC or MOC exercise powers, duties and functions under our Acts this has to done in a way that gives effect to the principles of the Treaty The various rulings place the consideration of the principles in the context of the overarching purpose of the Acts, any specific statutory requirements on decision-makers, and the facts of the case The requirement is more than procedural in terms of impact – s 4 can require different outcomes. S 4 is not to be balanced against the other relevant objectives/considerations – however, it is also not a 'veto' and does not diminish the Crown's right to govern. <p>While there are different verbal formulations of Treaty clauses, some stronger than others ("give effect to", or weaker such as "consistent with" (COVID Fast-Track) or an even weaker injunction such as "have regard to"), the particular verbal formulation is not always necessarily of decisive importance for any given set of facts, and what ultimately matters is the legislative indication that the principles of the Treaty need to be addressed. In many cases, the practical effect of different Treaty clauses will be the same.</p> <p>However, any move away from the s 4 standard in respect of the one stop shop for conservation matters would be seen as a significant diminution of rights and interests afforded to iwi and hapū. Given this, and the integration of s 4 in several settlements, if there is a Treaty clause in the Fast-Track Bill, there may also be little to gain in moving away from the s 4 standard for conservation-related decision-making. If no Treaty clause is included in the Fast-Track Bill, then there is arguably more at stake around the need for clarity on whether section 4 or Part 2 of the RMA is intended to apply.</p> <p>Officials therefore seek confirmation from Ministers that the Treaty standards of in-scope legislation will otherwise apply and that Ministers are not seeking to dis-apply absolutely/explicitly the Treaty protections in Part II of the RMA and s4 of the Conservation Act, or the s4 Crown Minerals Act provision ('have regard to').</p> <p>If your preference is not to dis-apply these provisions, s4 of the Conservation Act could be added in a similar way as Part 2 of the RMA as a matter which the Minister(s)/Panel must have regard to, along with any other matters under the relevant parent legislation for the one stop shop approvals – and subject to a lower weighting than the purpose of the FTC Bill. This would reduce the scope for the Courts to make any other interpretation, and would codify the principle that, more generally, Treaty clauses must be read within the purpose of the legislation in which they sit. This means that you read section 4 within the context of the Conservation Act (purpose, etc), and that the Panel/Ministers would have to weigh that against (and lower than) the purpose of the FTC Act in determining decisions.</p>

Proposal	Options and Recommendations	Decisions	Advice and Analysis
			See also Decision C below and the importance of being clear on the decision making standard the new legislation applies.
B. Overarching Treaty settlement clause? Or not?	6. Agree to have, in addition to a range of procedural and other protections in the FTC bill, an overarching Treaty clause focused on Treaty settlements	Yes / No	<p>Decisions taken or pending on Treaty related matters for the FTC bill are a package of measures designed to implement Cabinet's direction to include in the legislation protections for Treaty of Waitangi settlements and other legislative arrangements. See Appendix One for the 'Treaty package' of decisions taken and decisions pending.</p> <p>There is a question as to whether ministers also wish to include in the legislation an upfront, visible representation of the Cabinet commitment.</p> <p>[REDACTED]</p> <p>S9(2)(h)</p> <p>The case for having an upfront, overarching Treaty settlement clause is that it provides the clearest assurance to iwi that, while the government is progressing a faster, one-stop shop approach to approving significant projects, it will also recognise Treaty settlements/specified arrangements and Māori rights and interests along the way. It communicates an intent to strike a balance between the government's policy objectives. The legislation's purpose will take precedence, it will provide for faster decision-making within timeframes and will include other legislative schemes additional to the RMA. But Treaty settlements/specified arrangements and Māori rights to participate in and influence consenting processes or other one-stop shop approvals for these significant projects will be respected.</p> <p>[REDACTED]</p> <p>S9(2)(g)(i)</p>
C. If yes to overarching Treaty settlement clause, what kind of clause do you prefer?	<p>7. Agree EITHER</p> <p>Option A</p> <p>To include in the FTC bill an overarching Treaty settlement clause which states:</p> <p>(a) All persons exercising functions and powers under the FTC Bill must act in a manner consistent with Treaty settlements and specified arrangements;</p> <p>(b) In order to achieve (a), Treaty settlements and specified arrangements must be given the same or equivalent effect under the FTC Bill as they would have under the equivalent processes in the original legislation (eg, RMA, Conservation Act); and</p>	Yes / No	<p>If you agree to have an upfront, overarching Treaty settlement clause, officials recommend you choose Option A for the following reasons.</p> <p>[REDACTED]</p> <p>S9(2)(g)(i)</p> <p>[REDACTED] S9(2)(h)</p> <p>Officials consider that Option A is explicit that the same or equivalent rights and standards as currently apply through Treaty settlements and in-scope legislation will apply in the new fast-track regime. This is important because existing Treaty settlements were negotiated in the context of those provisions – PSGEs will expect that the same rights are recognised.</p>

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	<p>(c) The same Treaty and related provisions under the original legislation (such as the Treaty/Māori protections in Part 2 of the RMA and s4 of the Conservation Act) apply to processes and relevant decisions under the FTC Bill.</p> <p>OR</p> <p>Option B</p> <p>To include in the FTC Bill an overarching Treaty settlement clause which states:</p> <p>In order to reflect the Crown's commitment to upholding Treaty settlements and specified arrangements, the FTC Bill provides protections for those matters including:</p> <ul style="list-style-type: none"> (a) eligibility criteria to protect Treaty settlements and specified arrangements; (b) for Treaty settlements and specified arrangements to be given the same or equivalent effect under the FTC Bill as they would have under the equivalent processes in the original legislation (eg RMA, Conservation Act); (c) a requirement that applicants must include information on Treaty settlements and specified arrangements in their application for referral and, if referred, their substantive application; (d) a requirement on applicants, Ministers and expert panels to invite comment from Treaty settlement / related entities; (e) a requirement for a report on Treaty settlements and specified arrangements to be provided to and considered by Ministers and expert panels; (f) for Ministers to decline applications for referral that are inconsistent with Treaty settlements and specified arrangements; and (g) for expert panels to decline applications that are inconsistent with Treaty settlements and specified arrangements. <p>OR</p> <p>Option C</p> <p>8 To include in the FTC bill an overarching Treaty settlement clause similar to the COVID-19 Recovery (Fast-Track Consenting) Act 2020 section 6(a), which would require those undertaking functions and powers under the FTC Bill to act in a manner consistent with the principles of the Treaty, and Treaty settlements and specified arrangements.</p>	<p>Yes / No</p> <p>Yes / No</p>	<p>Option A, paragraph (c) would also assure yet-to-settle iwi that the opportunity currently available to them under the in-scope legislation to have a say on projects that may impact on land or other interests of theirs (and that might yet be the subject of redress through a future Treaty settlement) is also preserved.</p> <p>We have included Options B and C so that Ministers have alternatives to consider.</p> <p>Option B is a descriptive Treaty clause listing the various ways in which the Crown's commitment to upholding Treaty settlements is reflected in the legislation.</p> <p>The main downsides to Option B are that Parliament will be seen to have defined what the Crown's settlement commitments amount to on the basis of a bill proposed by the Executive without negotiating or agreeing those commitments with iwi; the absence of requirements to act consistently with Settlements; and a lack of clarity on the standards to be applied by decision-makers.</p> <p>Additionally, Option B does not contain the same assurances for iwi that the operation of the fast-track legislation will deliver the same or equivalent effect.</p> <p>Option C is a standalone Treaty principles and settlements clause. It would be a clear confirmation of the intention to uphold those matters.</p> <p>However, by requiring actions "consistent with the principles of the Treaty" that standard may fall short of what is widely acknowledged as a high standard in the Conservation Act to administer that regime in a manner that "gives effect to the principles of the Treaty of Waitangi". Standards in the FTC bill less than those confirmed to Māori through settlements will risk legal challenge by Māori.</p> <p>If ministers agree to recommendations 4 and 5 above – that the bill we be explicit that the current Treaty standards of in-scope legislation (section 8 of the RMA, section 4 of the Conservation Act, and section 4 of the CMA) would continue to apply in the bill subject to the primacy of the purpose of the bill - introducing a "consistent with" standard in an overarching Treaty settlements clause would confuse the standards expected of decision-makers.</p>

Proposal	Options and Recommendations	Decisions	Advice and Analysis
D. Overhang decisions (other deferred matters)	<p>9 Note that Ministers:</p> <p>a. have agreed to remove the requirement to comply with the conservation general policy, conservation management strategy, conservation management plan, or reserve management plan [rec 36 in Table A of the second joint Ministers meeting]</p> <p>b. reserved their decision on whether this should be “except where this would undermine a Treaty settlement”</p> <p>10 Note that Ministers have agreed to a parallel/equivalent decision in relation to the CMA: that the decision-maker may consider any policy statement or management plan in relation to the land except where this would undermine Treaty Settlements [rec 54 in Table A of the second joint Ministers meeting]</p> <p>11 Note that many settlements provide for procedural and substantive rights in relation to CMS/CMPs, including joint decision-making and authorship, and that these statutory documents make binding rules about activities allowed on PCL, and relating to taonga species, as well as requirements regarding consultation and decision processes</p> <p>12 Agree that the Panel/Ministers:</p> <p>a. Must consider CMS/CMPs in making decisions on conservation-related approvals where these have been co-authored, authored, or jointly approved by iwi and seek the views of the relevant iwi before granting approvals; and</p> <p>b. Must not disapply the relevant CMS/CMP or reserve management plan if this would undermine a Treaty settlement</p> <p>13 Note that there is an inevitable degree of uncertainty and judgment involved in determining what may be required in any given case and what would “undermine a Treaty settlement”</p>	<p>Yes / No</p>	<p>All Treaty settlements include significant conservation redress, and the Treaty has been described as a core feature of the relationship between the Crown generally, DOC and Māori in relation to conservation.</p> <p>There is a wide range of conservation redress. The range and number of redress commitments reflect Cabinet guidance that redress is commensurate with the strength of association of an iwi with a place or landscape. The types of activity that would be progressed through an Fast-Track process would be of interest to iwi and hapū.</p> <p>The more straightforward types of redress (deeds of recognition, statutory acknowledgements and overlay classifications) are intended to provide for iwi involvement and recognition of their cultural and historic interests in the process leading up to DOC decision-making.</p> <p>There are “static” parts of the redress (for example a statement about an association or interest in a place). There is potential for settled groups to be aggrieved by a truncated or “on paper” version of a consent process that limited their direct involvement in a process. This could result in legal challenges or referral to the Waitangi Tribunal.</p> <p>Some redress involves iwi in activities directly (for example preparing strategies and plans) or in some form of decision-making role (joint management, involvement in Conservation Management Strategies (CMS) and Conservation Management Plans (CMP), approval of management plans). These types of redress are intended to provide iwi with a hands-on involvement in mechanisms for managing and protecting whole landscapes. They could be frustrated by a process that was not required to consider their ambitions or expectations for those landscapes or didn’t allow them to influence decision-making.</p> <p>There are forms of redress that involve the transfer of land (in fee-simple or with encumbrances) to iwi, or to vest in the entity itself (Te Urewera, Whanganui River, Taranaki Maunga). This includes land administered under the Reserves Act. DOC recommends these legal entities should be excluded as equivalent to Schedule 4 Crown Minerals Act land.</p> <p>There are relationship agreements which commit DOC to working with the iwi to explore both process and decision-making roles, and potentially subsequent transfer of sites. 57 (of 65) have specific section relating to concessions/statutory authorisations.</p> <p>S9(2)(h)</p> <p>There is public conservation land that will or is very likely to be subject to a future settlement: for example, all of the public conservation land north of Auckland up to and including the Mangamuka Range, and land that makes up North Island east coast harbours. Areas that may already have been subject to settlement for one iwi may also be subject to additional settlements by other iwi.</p> <p>S9(2)(g)(i)</p> <p>This framework will likely constrain the further decisions you will wish to make to streamline these approvals or create a more enabling regime – for example, to enable the Panel to override or disregard the current requirement to comply with statutory documents such as conservation management strategies and plans.</p>

To Hon Chris Bishop
Minister of Housing
Minister for Infrastructure
Minister Responsible for RMA Reform

Hon Tama Potaka
Minister of Conservation
Minister for Māori Crown Relations: Te Arawhiti

Hon Shane Jones
Minister for Oceans and Fisheries
Minister for Regional Development
Minister for Resources

Cc Hon Simeon Brown
Minister for Energy
Minister of Local Government
Minister of Transport

Date 21 February 2024

Report no.
2023/2024 - 156

Title **Fast-track consenting bill: Treaty package further
information requested and decisions for 22
February**

Purpose

1. This brief follows on from the ministerial meeting on 18 February considering the 'Treaty package' for the Fast-Track Consenting Bill. It:
 - Records Ministers' decisions and direction from the 18 February meeting;
 - Tests the extent to which strong process provisions in the fast-track legislation help the Crown to uphold Treaty of Waitangi settlements and other legislative arrangements consistent with Cabinet's direction [CAB-24-Min-008 at 35];
 - Identifies the gaps and further issues that would need to be worked through in the course of the legislative process to provide an assurance of upholding those commitments;
 - Reports on the 19 February meeting hosted by Ministers Bishop and Potaka with the Pou Taiao group of the National Iwi Chairs Forum (NICF); and
 - Appends a revised table of decisions on the fast-track 'Treaty package' for Ministers' consideration at their 3pm 22 February meeting – **Appendix 2**.

Background

Outcomes of Ministerial meeting 18 February

2. Appendix Two to the briefing for the ministerial meeting on 18 February contained a set of 'agree' decisions for ministers. For our records, and for drafting instructions to PCO, our summary of those decisions is as follows:

Recommendation	Outcome
4. Agree that the current Treaty standards of in-scope legislation (section 8 of the RMA, section 4 of the Conservation Act, and section 4 of the CMA) would continue to apply in the Bill.	Minister Jones was clear in his position that section 4 of the Conservation Act and section 8 of the Resource Management Act, and the associated jurisprudence with those provisions, should not be imported into the fast-track legislation.
5. Agree that this will be explicitly included in the Bill alongside provisions making it clear that the purpose of the FTC Bill has primacy.	Ministers thought that this matter may not be able to be resolved by the ministerial sub-group.
6. Agree to have, in addition to a range of procedural and other protections in the FTC bill, an overarching Treaty clause focused on Treaty settlements.	In particular through their further consideration of recommendation 7 ministers appeared to agree that an overarching Treaty clause focused on Treaty settlements should be incorporated into the bill.
7. and 8. Agree to Option A or Option B or Option C as outlined in Appendix Two.	Ministers asked officials to find an Option B type solution (i.e. a descriptive Treaty clause) to recognise the Crown's commitment to existing settlement commitments; ensure there are obligations to engage iwi/hapū entities in accordance with those settlement commitments in the course of considering a fast-track project; ensure that yet-to-settle iwi are also consulted and able to input to the process (and Minister Jones's 'consulting provision' drafting was subsequently shared)
12. Agree that the Panel/Ministers: a. Must consider CMS/CMPs in making decisions on conservation-related approvals where these have been co-authored, authored, or jointly approved by iwi and seek the views of the relevant iwi before granting approvals; and b. Must not disapply the relevant CMS/CMP or reserve management plan if this would undermine a Treaty settlement.	Ministers agreed to 12(a). But said 'no' to 12(b).

Analysis and further information for Ministers

How far can strong process requirements in the FTC bill help the Crown to uphold Treaty settlement and other legislative commitments?

3. Alongside the 'architecture' protections for upholding Treaty settlements already agreed by Ministers, the 'process' requirements in BRF-4239 Tranche 2B now agreed by ministers, go a long way to ensure that settlement obligations are upheld within the fast-track framework on a case-by-case, project-by-project basis. **Appendix 1** to this brief provides ministers with an overview of these decisions.
4. These requirements include:
 - **Pre-application stage** – Applicant must engage (ensure this includes statutory acknowledgement holders) and include information about that with their application. That information should include whether there is agreement between the applicant and the entities consulted or whether there are issues and identify areas of actual or potential conflict with settlements
 - **Receipt of application** – Minister receives Treaty obligations report from agency that, among other things, identifies relevant groups and PSGEs. Minister must consult with the identified groups and PSGEs. If application fails to meet an eligibility requirement (e.g. the project activity would occur on redress land but the PSGE has not agreed for that to happen) the application could not be accepted.
 - **Decision on referring** – Minister must consider the Treaty obligations report and relevant information supplied by the applicant.
 - There is an outstanding question as to whether Ministers must decline to refer if referring would be inconsistent with a Treaty settlement. Analysis and further advice as requested by Ministers is provided in **Appendix 2** seeking a final decision on this matter.
 - **Terms of referral** – Referral decision must contain directions to comply with certain settlement arrangement (i.e. considering and giving weight to specified documents; complying with procedural steps that would be required by a settlement if the application were not fast-tracked).
 - **Appointment of panel** – Panel must include a member appointed by relevant iwi authorities. If a settlement stipulates a process for appointing hearing committees, including nomination and/or appointing rights and the proportional make-up of the panel, then those stipulations must be complied with for the fast-track panel. We discuss panel make-up issues further in the next section on 'gaps'.
 - **Panel process** – Panel must invite comment from PSGEs and other relevant groups and must consider and give equivalent weight to documents if that is required under a settlement if the application were not fast-tracked.
 - **Panel recommendation** – The standard for the decision to recommend approval or decline is addressed in proposals A and B in **Appendix 2**.

What gaps or further issues would need to be worked through in the course of the legislative process to provide an assurance of upholding those commitments?

5. Once there is a clear and strong statement of commitment to honour Treaty settlements and other specified arrangements, we can turn to the handful of more complex issues that we have identified in the time available, that would need to be worked through in the course of the

legislative process, including by working with Pou Taiao technicians and directly with PSGEs. This is because the effect of the settlements goes beyond engagement and turns in part on how settlements influence decision-making.

6. Two of the main ways settlements do this are:
 - PSGE nominees participating in decision-making on consents and statutory authorisations (including concessions); and
 - changes to the planning framework through strategy documents and/or statutory values and/or plans.
7. Regarding the first of these, in some settlements PSGEs are entitled to appoint nominees to hearing committees or boards of inquiry. We have identified five settlements that provide for PSGE nominees to be joint decision makers on consents and concessions alongside local authorities or Ministers in relation to specific natural resources of great significance to iwi – Waikato River, Taranaki Maunga, the Hauraki Collective, Ngāti Rangī and Tuwharetoa.
8. The effect of these provisions is to provide an active role for PSGE nominees on the substantive decision on the consent AND on the conditions to be applied to the activity.
9. For conservation decisions there is a large number of settlements that provide for an active involvement of the PSGE in DOC statutory decision-making and a stepped out and iterative process to ensure iwi interests are understood.
10. As Ministers are to be the ultimate decision maker on applications under the FTC regime it does not map to the redress provided in these settlements and other approaches will need to be taken to enable equivalent influence to approximate the settlement requirement – e.g. by exploring solutions with affected PSGEs.
11. Concerning Treaty settlement changes to the RMA and conservation planning framework through strategy documents and/or statutory values, we have identified around 12 settlements which provide for PSGEs and councils to prepare documents that influence RMA planning processes in relation to specific natural resources. Examples include Lake Taupō, Te Oneroa a Tohe (Ninety Mile beach), and the Kaituna River.
12. The Waikato River settlement goes further and provides for the creation of Te Ture Whaimana – the vision and strategy for the Waikato River, which is deemed to be part of the Waikato regional policy statement and prevails over any inconsistent national policy statement under the RMA.
13. The Whanganui and Whangaehu River settlements provide for certain values set out in legislation to apply to plan-making processes under the RMA and Conservation Act.
14. There are similarly a number of settlements that provide for PSGEs to prepare parts or the whole of Conservation Management Strategies or Conservation Management Plans. These set rules and constraints on activities allowed which all approvals must comply with outside of the Fast Track regime.
15. Where those plans and strategies are to be given less or different weight by decision-makers under the fast-track legislation we will need to work with iwi technicians and affected PSGEs to identify how the influence of the settlement instruments is not materially changed.

Key themes and outcomes from ministerial hui with NICF Pou Taiao Chairs and Technicians

16. Ministers Bishop and Potaka met with National Iwi Chairs Forum Pou Taiao on 19 February to discuss the fast-track legislation. Pou Taiao technicians have been engaged in the development of policy decisions under cover of a non-disclosure agreement. Pou Taiao is, accordingly, an informed group who understands the government's intentions for the fast-track legislation. They wrote to ministers on 14 February expressing a number of concerns about the fast-track policy.
17. The 19 February meeting, however, was a positive one.
18. Key points made by Pou Taiao were that they:
 - Don't want to see a standard Treaty clause in the fast-track legislation;
 - need something bespoke because Treaty settlements are bespoke;
 - Minister Bishop acknowledged this while caveating we can't have every single commitment in legislation; we need a generalised set of words to cover those commitments
 - Need Te Tiriti consistent processes at all stages of the fast-track process (eligibility, referral, Panel, decision).
 - Don't want to be 'consulted' – want opportunity to partner where possible, and they were keen on pre-project/early and meaningful engagement with potentially affected iwi/hapū groups.
 - Want to see the government's thinking and contribute to it (which led to an agreed outcome that Lil Anderson and James Palmer will convene with officials/iwi technicians asap).
19. There was also an exchange on the need to retain connection to the underlying RMA and Conservation Act frameworks. While key provisions in Part 2 of the RMA and section 4 of the Conservation Act were cited by Pou Taiao, and countered by ministers on the government's (ultimately Parliament's) right to amend regulatory frameworks, the meeting moved on to discuss how we can work together now and in the course of the legislative process.

Feedback on FTC proposals from engagement with PSGEs

20. Feedback received to date on the fast track consenting regime from Post-Settlement Governance Entities (PSGEs) came predominantly in response to a letter sent by Hon Chris Bishop, which did not provide the level of detail Pou Taiao has received. High level themes identified in this feedback include:
 - a desire to see the inclusion of a Treaty of Waitangi/ Te Tiriti o Waitangi clause;
 - a commitment to upholding Treaty settlements that have been ratified and those that are still being negotiated;
 - concerns over the timeframe of the process including inadequate engagement time and information to fully engage in the process; and
 - concern that the health of te taiao/ the environment could be undermined in this Act.
21. Feedback also noted that useful resources and relationships that have been developed in the RM space such as Cultural Impact Assessments and Iwi Management Plans, may not be utilised or carry the same weighting under the new Act. Lastly, some PSGEs noted that the fast tracking of consents can be beneficial and an opportunity for iwi to pursue iwi-led ventures.

22. On 27 February 2024 a hui is scheduled between Ministers and PSGEs. Subject to Ministerial (and Select Committee) agreement, MfE officials will continue to engage with PSGEs and other relevant groups up to, and through, the Select Committee process for the fast-track bill.

Fast-track consenting bill 'Treaty package' decisions for ministers 22 February

23. Cabinet has agreed that the FTC legislation "will include protections for Treaty of Waitangi settlements and other legislative arrangements including under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hāpu o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements under the RMA" [CAB-24-Min-0008 at 35].
24. This decision is essential given the commitment within the National and New Zealand First Coalition agreement which states the Coalition Government will honour the undertakings made by the Crown through past Treaty of Waitangi settlements.
25. As previously described, but now updated, the 'Treaty package' for the FTC bill consists of:
- detailed 'procedural' decisions in BRF-4239 Tranche 2B now agreed;
 - 'architectural' decisions ministers have taken relevant to Treaty considerations; and
 - decisions still to be taken following your 18 February hui (summarised above at para 2 of this memo).
26. Consistent with the material you received for your 18 February meeting, **Appendix 1** to this brief provides an overview of the first two parts of the Treaty package – architectural and procedural decisions already taken – to give ministers an overall sense of what is envisaged for the FTC bill in order to include the protections Cabinet has sought.
27. The process requirements for the FTC bill are a key part of the emerging package. We draw your attention to these because they:
- Align with the consultation ideas expressed by Minister Jones at your 18 February hui;
 - Would, as discussed above at paras 3-4, go a long way to assisting the Crown to uphold its Treaty settlement and other legislative commitments to iwi/hapū;
 - Impose engagement and information requirements on applicants that would send a strong signal to developers that early engagement with iwi/hapū will be required for projects seeking to use the fast-track one-stop shop process; and
 - It is this behaviour that Pou Taiao is seeking to encourage and which we know from experience is the way good developers succeed.
28. **Appendix 2** to this brief sets out a revised table of decisions on the fast-track 'Treaty package' for Ministers' consideration at their 3pm 22 February meeting covering off outstanding decisions needed for drafting the bill. These cover:
- some further process decisions officials recommend (Decision row A);
 - a couple of decisions pending from previous briefs for which ministers requested further advice. This was in relation to eligibility criteria, and mandatory and discretionary grounds for ministers to decline a referral application for inconsistency with Treaty settlements and other commitments. Analysis and recommendations on these issues, and on the decision-making standard for ministers at the approve/decline stage, are at Decision row B of **Appendix 2**;

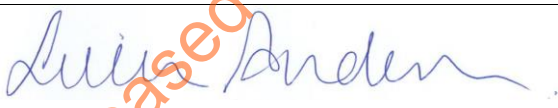
- the hierarchy of decision-making considerations for Panel recommendations (Decision row C); and
- options for an overarching Treaty settlement clause (Decision row D).

Recommendations

29. It is recommended you:

- note** Cabinet has agreed that the FTC legislation “will include protections for Treaty of Waitangi settlements and other legislative arrangements including under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hāpu o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements under the RMA” [CAB-24-Min-0008 at 35];
- note** that at your meeting on Sunday 18 February you sought further advice on aspects of a ‘Treaty package’ for the FTC Bill, including consultation provisions with Māori and further options for an overarching Treaty settlement clause;
- note** Ministers Bishop and Potaka had a positive meeting with National Iwi Chairs Forum on 19 February;
- note** officials’ assessment that the detailed ‘procedural’ provisions ministers have now taken (summarised in **Appendix 1**) would go a long way to upholding Treaty settlement and other commitments;
- note** this brief and its Appendices is designed to assist you to make all remaining policy decisions on a ‘Treaty package’ that would enable bill drafting to proceed;
- indicate** your preferred options in the decisions table at **Appendix 2**.

Nāku noa, nā

 <p>Lil Anderson Tumu Whakarae The Office for Māori Crown Relations – Te Arawhiti</p>	 <p>James Palmer Secretary for the Environment Ministry for the Environment – Manatū Mō Te Taiao</p>
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Ministers' Signatures

Hon Chris BISHOP
Minister of Housing
Minister for Infrastructure
Minister Responsible for RMA Reform

Date

Hon Tama POTAKA
Minister of Conservation
Minister for Māori Crown Relations: Te
Arawhiti

Date

Hon Shane JONES
Minister for Oceans and Fisheries
Minister for Regional Development
Minister for Resources

Date

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Appendix 1: Treaty Package of decisions taken and decisions pending for FTC legislation [as at 20 February 2024]

Legislative Outline	Confirmed decisions ¹	Decisions pending
Overarching provisions		
Treaty settlements		Further discussion required on options for an overarching clause relating to the protection of Treaty settlements. <i>See Appendix 2, decision D.</i>
Requirements for applicants		
Eligibility criteria	<p>An activity is ineligible if it:</p> <ul style="list-style-type: none"> - would occur on land returned under a Treaty settlement, or Identified Māori land, without agreement in writing from relevant landowner(s); - would occur in a customary marine title area or protected customary rights area without agreement from the rights holder/group; - would occur on Māori customary land; - would occur land set apart as Māori reservation under part 17 of Te Ture Whenua Māori Act 1993; and - includes an aquaculture activity or other incompatible activity that would occur within an aquaculture settlement area reserved through the Māori Commercial Aquaculture Claims Settlement Act 2004 (MCACSA), or identified within individual iwi settlements, or within the area under an authorisation issued through the MCACSA/RMA, unless the applicant holds the relevant authorization. <p>Applicants will not be able to apply for a s61 access arrangement in an area excluded through the Minerals Programme at the request of iwi and hapū.</p>	Further discussion required on whether a project will be ineligible if it is inconsistent with Treaty settlements / specified proposals. <i>See Appendix 2, decision B.</i>
Engagement requirements	Applicants must engage with relevant iwi, hapū, Treaty settlement / related entities, applicant groups under the Marine and Coastal Area (Takutai Moana) Act 2011, ngā hapū o Ngāti Porou where relevant.	
Information requirements	Applicants must include relevant information about Treaty settlements / specified arrangements, information identifying Māori parcels of land, marae and wāhi tapu within the project area, and a record of engagement undertaken with parties above.	Further decision on applicants providing information in relation to Statutory Acknowledgements and where the applicant is unable to identify specified information. <i>See Appendix 2, decision A.</i>
Requirements for Minister(s)		
Inviting comment	<ul style="list-style-type: none"> - If the Ministers receive an application, they must copy it to and invite comment from Treaty settlement / related entities, and in respect of Māori land, any Māori land administering entity and agents appointed by the Māori Land Court for the owners of a Māori land block that does not have an administering entity. - The Ministers must consult with relevant parties identified in the report on Treaty obligations [see below]. 	
Considering specified information	<ul style="list-style-type: none"> - The Ministers must consider a report on Treaty obligations prepared by the administering agency setting out relevant information, a summary of comments received by the Minister, and the agency's advice on whether the referral application should be accepted. - The Ministers must consider information on Treaty settlement / related matters, and iwi/hapū interests as set out in the application and any other relevant information on those matters. 	
Grounds for referral to panel	The Ministers must decline the referral application if it would be inconsistent with a Treaty settlement or specified arrangement to refer it. <i>Further clarification is sought on this decision – see Appendix 2, decision B.</i>	
Giving effect to settlement arrangements and specified arrangements	<ul style="list-style-type: none"> - Where a Treaty settlement / specified arrangement provides for the consideration of a document (including statutory planning document), where relevant it must be given the same or equivalent effect. - Where a Treaty settlement / specified arrangement provides for procedural matters, the Ministers must comply with those requirements where relevant. - The Ministers must also direct the panel to comply with these matters where relevant. - Ministers must consider conservation plans and strategies in making decisions on conservation-related approvals where these have been co-authored, authored, or jointly approved by iwi and seek the views of the relevant iwi before granting approvals 	
Informing of decision	The administering agency must give notice of the decision to anyone invited to comment, and if the decision is to accept all or part of an application, the Minister must also give notice to relevant iwi authorities, Treaty settlement entities, and others (including relevant Māori land trusts, incorporations or agents appointed under Te Ture Whenua Māori Act 1993).	
Requirements for panel		
Inviting comment	The panel must invite comment from relevant Treaty settlement / related entities and any party identified in the report on Treaty obligations.	
Giving effect to settlements and specified arrangements	<ul style="list-style-type: none"> - If a Treaty settlement or specified arrangement includes procedural matters, including relating to the appointment of a decision-making body for hearings, the panel must comply with the relevant arrangements or obtain agreement from the relevant entity to adopt a modified arrangement, which must not be unreasonably withheld. - If a Treaty settlement or specified arrangement imposes an obligation on a local authority when determining an application for resource consent, the panel must comply with that obligation as if it were the local authority. - Where a Treaty settlement / specified arrangement provides for the consideration of a document (including statutory planning document), where relevant it must be given the same or equivalent effect - panels must consider conservation plans and strategies in making decisions on conservation-related approvals where these have been co-authored, authored, or jointly approved by iwi and seek the views of the relevant iwi before granting approval - decision makers on Crown Minerals approvals must consider conservation planning documents where these have been co-authored with iwi under Treaty settlements 	
Membership of panel	<ul style="list-style-type: none"> - Panels must include a member nominated by the relevant iwi authorities. - The panel must collectively have an understanding of Te Tiriti o Waitangi and its principles. 	
Panel consideration		Further decisions on the hierarchy of decision-making for the panel's consideration before making recommendation to Ministers. <i>See Appendix 2, decision C.</i>
Conditions	<ul style="list-style-type: none"> - The panel can impose conditions specifically to recognise or protect Treaty settlements / specified arrangements and iwi / hapū with interests. - The panel must share draft conditions with parties invited to make comment (including PSGEs and other related entities). 	
Final Ministerial approval		
Ministers' consideration of panel recommendations		Further decisions relating to Ministers considerations when accepting/declining panel's recommendation. <i>See Appendix 2, decision A.</i>
Specific matters		
Listing fast-track legislation in relevant settlements	The fast-track legislation will be included in the list of statutes relevant to Treaty settlement mechanisms in specific settlement legislation, subject to confirmation from the relevant Treaty settlement entities.	
Recognising Te Ture Whaimana	The fast-track legislation will include a clause confirming the role of Te Ture Whaimana as the primary direction-setting document for the Waikato River (equivalent to section 104 of the Natural and Built Environment Act 2023, which was retained through the repeal process.	

¹ In this Table 'Treaty settlements and specified arrangements' is used as shorthand for Treaty settlements and other legislative arrangements Ministers have agreed to be protected (see CAB-24-Min-0008) including arrangements under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements under the RMA, as well as relevant Acts such as the Māori Commercial Aquaculture Claims Settle Act 2014, the Ngā Mana Whenua o Tāmaki Makaurau Act 2014 and others. Likewise, Treaty settlement / related entities is used as shorthand for post-settlement governance entities and other relevant entities under the specified arrangements.

Legislative Outline	Confirmed decisions ¹	Decisions pending
Adding listed projects by Order in Council		- Further decisions requiring Ministers to consult with PSGEs and other entities before recommending OiC. <i>See Appendix 2, decision A.</i>

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Appendix 2: Table of further Treaty related decisions for ministerial hui 22 February

Proposal	Options and Recommendations	Decisions	Advice and Analysis
A. Process requirements to uphold Treaty settlements and other legislative arrangements	<ol style="list-style-type: none"> Note ministers have made a number of process requirement decisions [recommended in BRF-4239 Tranche 2B] and summarised in the right hand column of Appendix 1 to this brief. Note officials' assessment that those 'procedural' provisions will go a long way to upholding Treaty settlement and other commitments. Agree the following further process decisions we have identified as necessary to better uphold Treaty settlement commitments: <ol style="list-style-type: none"> The report that joint Ministers are required to obtain before recommending a project be added to the schedule of directly referred projects by Order-in-Council must be prepared by the responsible agency and contain the same information as required for a project referred by the Minister; In addition to the matters listed in FTCA Schedule 6 clause 9 or 13 (as applicable) an applicant must identify any statutory areas in or adjacent to the project area that are the subject of a statutory acknowledgement in Treaty settlement legislation; If the applicant is unable to obtain the name and address of the owner of land in or adjacent to a project area because the land is Māori land in multiple ownership, include a statement to that effect; If the panel considers Treaty settlements / arrangements and iwi/hapū with interests cannot be recognised or protected by the imposition of conditions, the panel must recommend the application be declined. 	<p>Yes No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>	<p>As noted, officials consider the 'procedural' provisions go a long way towards achieving an outcome where the integrity of Treaty settlements and other arrangements is upheld. A small number of additional matters have been identified for inclusion in the framework of provisions for the following reasons.</p> <p>These provisions will work best if there is clarity. With that in mind, it is preferable to be explicit that the Treaty obligations report required before a decision to add a project to the schedule of directly referred projects should be the same as if it were a Ministerial referral. The report will be even more important for direct referral where there will not be the same consultation with relevant groups.</p> <p>It is important to identify areas that are subject to statutory acknowledgements in Treaty settlements to ensure the relevant PSGE has an opportunity to bring attention to the statement of significance acknowledged, but not recorded, in the settlement legislation.</p> <p>The information an applicant must provide includes the full name and address of each owner of the site and of land adjacent to the site. If this includes Māori land in multiple ownership and not vested in a trust or Māori incorporation it will not be possible or practical to provide those details but it will be important to identify when that type of land is in or adjacent to the project area so that the existing provisions for an agent for the owners to be appointed by the Māori Land Court will be triggered.</p> <p>When the panel is deciding what recommendation to make there is currently no decision-making standard in relation to Treaty settlement arrangements. The recommended provisions would require the panel to recommend an application be declined if the panel considers Treaty settlements / arrangements cannot be recognised or protected by the imposition of conditions.</p> <p>We address the ministerial decision-making standard when deciding to accept or decline the Panel's recommendation in Decision B below.</p>
B. Overhang decisions – eligibility and Ministerial referral assessment and decision-making – consistency with Treaty settlement or other commitments	<ol style="list-style-type: none"> Note you requested further advice on two matters - eligibility criteria and ministerial decision making at the referral stage - relevant to whether or not a project can proceed consistent with Treaty settlement or other commitments. Note our further advice adjacent. Agree that inconsistency with a Treaty settlement or other commitments should <u>not</u> be a criteria making projects ineligible for fast-track (and, therefore, no provision for this need be made in the bill). 	<p>Yes / No</p>	<p>The policy intent is to ensure as far as possible that, where Treaty settlement commitments are in play for a fast-track project, approvals are made consistent with those commitments.</p> <p>Appendix 1 to this briefing details the 'Treaty package' of decisions made by ministers to give effect to this intent. Ministers have sought further discussion of two of those decisions.</p> <p>a) Firstly, our earlier recommendation that a project will be <u>ineligible</u> if it is inconsistent with Treaty settlements / specified proposals [recommendation 70 from Briefing 2 (BRF-4239) Table B – 19 Feb].</p> <p>We now consider that an eligibility protection for Treaty settlements of this kind is unnecessary. Ruling out projects from consideration for the fast-track scheme due to an inconsistency with Treaty settlements would be too high a bar too soon in the process. We are trying to encourage developer applicants to engage early with Māori and, in the course of the fast-track process, to find ways to proceed consistently with Treaty settlement commitments. However, inconsistency with settlement commitments need not be a bar from the outset.</p>

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	<p>7. Agree that inconsistency with a Treaty settlement or other commitments should be a <u>discretionary</u> criteria for ministers considering whether or not to decline to refer a project to a Panel.</p> <p>8. Agree that the standard for ministerial decision-making at the final approve/decline stage should be made explicit in the FTC bill.</p> <p>9. Agree that the standard for ministerial decision-making at the final approve/decline stage should be:</p> <p>EITHER</p> <p>Option A that where the Panel recommends ministers decline on the basis of inconsistency with Treaty settlements and other commitments, ministers are obliged to decline</p> <p>OR</p> <p>Option B before approving a project Ministers must be satisfied, having regard to the panel's recommendation and any stated reasons for it, that approving the project and project conditions is consistent with Treaty settlement and other commitments</p> <p>OR</p> <p>Option C to require ministers to apply to their approve/decline decision the criteria suggested below for Panel decision-making (Decision C) and consider whether the decision is consistent with Treaty settlements and other arrangements</p>	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>	<p>b) Second, and relatedly, at your meeting on 15 February you sought further advice on the proposal that Ministers <u>must</u> decline to refer if directing the project to a panel would be inconsistent with a Treaty settlement, the NHNP Act, Takutai Moana Act, Mana Whakahono ā Rohe or Joint Management Agreement (we use the shorthand here 'Treaty settlement or other commitments'); and how that mandatory ground for declining referral worked with the discretionary grounds for declining referral [your discussion of recommendations 17, 18 and 19 (which were otherwise approved) in Briefing 2 (BRF-4203) Table A – 15 Feb refers].</p> <p>Our initial advice suggested the bill needs to clearly state that, if referring a project is inconsistent with Treaty settlement commitments or other commitments, it should be <u>mandatory</u> to decline referral to a Panel. We have reconsidered that view and set out our thinking here.</p> <p>At the referral point in the process ministers will have in front of them a reasonable amount of information from applicants, officials and, if they have provided views within the timeframe, PSGEs. That information will cover what Treaty settlement or other Crown commitments arise in respect of the project, what engagement the applicant has had with the PSGE or other affected group and what has been learned through that engagement, the PSGE/affected group's comments on the project, and views on what is required to proceed consistently with Treaty settlement commitments and whether that has occurred yet or not.</p> <p>That information, though, may not yet be sufficient to help ministers conclude definitively that a project will be carried out consistent with settlement commitments. A premature judgment of inconsistency at the referral stage may close off project opportunities a PSGE wants to take up. It also does not align with subsequent steps to agree how to advance the project in a way that is equivalent to the settlement arrangements (e.g. iwi nominees to a Panel) or, if discussions with iwi are advanced but not resolved, the chance to reach amicable solutions.</p> <p>We think there is a balance to be struck through the various fast-track stages for implementing the policy intent of meeting Treaty settlement and other commitments in the FTC scheme:</p> <ul style="list-style-type: none"> - Eligibility criteria should not bar projects for inconsistency at the start. - Ministers should be able to make a judgment at the referral stage as to progress towards, the subsequent steps required and/or the prospect for achieving a project consistent with relevant settlement commitments and have the discretion to refer the project to a Panel or not. - The Panel stage will then provide further opportunities (e.g. further calls for PSGE submission; recommended conditions) to find agreements or other solutions for achieving consistency. The Panel's assessment of settlement consistency will be a factor in recommending to ministers whether or not the project should be approved. - The Panel recommendation as a whole, and Treaty settlement consistency as a factor in it, would need to be given appropriate weight by ministers in ultimately approving or declining a project. <p>Accordingly, we recommend you agree that inconsistency with Treaty settlement and other commitments is a discretionary factor for ministers' decision whether or not to refer a project to a Panel.</p> <p>This would align with other settlement related discretionary grounds for declining referral if the activity would occur on land returned under a Treaty settlement, and has not been agreed to in writing by the relevant landowner; or if the activity would occur on land that the Minister for Treaty of Waitangi Negotiations considers is required for the settlement of any historical Treaty claim.</p> <p>There is a further question as to what final protection for consistency with Treaty settlements or other commitments should apply at the ministerial decision stage to approve with the recommended conditions or decline the consent. The best protection for Treaty settlements would be that, where the Panel recommends ministers decline on the basis of inconsistency with Treaty settlements, ministers are obliged to decline.</p> <p>A next best protection alternative is to require ministers to have regard to the Panel's recommendation overall and, specifically, to be satisfied the project and the recommended conditions are consistent with Treaty settlement and other commitments before approving.</p> <p>A third option would be to require ministers to apply to their approve/decline decision the criteria suggested below for Panel decision-making (Decision C) and consider whether the decision is consistent with Treaty settlements and other arrangements.</p>

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	<p>Option B</p> <p>When a project is referred to the panel, the panel must assess the application for an approval under this Act and any submissions received on that application, against the following matters, giving weight to them (greater to lesser) in the order listed:</p> <p>(a) the purpose of this Act;</p> <p>(b) the matters in Part 2 of the Resource Management Act 1991 and the purposes and Treaty clauses of the Conservation Act, Wildlife Act, Heritage NZ Pouhere Taonga Act, EEZ Act, Reserves Act, and Crown Minerals Act as relevant;</p> <p>(c) any relevant national direction, operative and proposed plans/policy statements, iwi management plans, joint management agreement, or mana whakahono ā rohe under the Resource Management Act 1991 and, where relevant, any conservation management plan and conservation management strategy prepared under the Conservation Act 1987.</p>	<p>Yes / No</p> <p>S9(2)(g)(i) & S9(2)(h)</p>	<p>• [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Option B includes s8 RMA (by citing Part 2 of that Act) and s4 Conservation Act (by citing the purpose and Treaty clauses of the in-scope Acts besides the RMA).</p> <p>As officials have advised previously there are good reasons to continue the application of these sections in the FTC regime. Firstly, Treaty settlement commitments have been negotiated under those frameworks. Maintaining their relevance, albeit subservient to the purpose of the FTC legislation, would help in upholding the Crown's commitments made in settlements. Conversely, any move away from the s 4 standard in respect of the one stop shop for conservation matters would be seen as a significant diminution of rights and interests afforded to iwi and hapū.</p> <p>Second, public conservation land <u>not</u> subject to Treaty settlements is still subject to s 4 of the Conservation Act for conservation decision-making (eg all concessions and permits), and many settlements refer to s 4. Section 4 has been described as the strongest form of Treaty clause on the statute books:</p> <ul style="list-style-type: none"> • When DOC or MOC exercise powers, duties and functions under our Acts this has to done in a way that gives effect to the principles of the Treaty • The various rulings place the consideration of the principles in the context of the overarching purpose of the Acts, any specific statutory requirements on decision-makers, and the facts of the case • The requirement is more than procedural in terms of impact – s 4 can require different outcomes. S 4 is not to be balanced against the other relevant objectives/considerations – however, it is also not a 'veto' and does not diminish the Crown's right to govern. <p>While there are different formulations of Treaty clauses, some stronger than others ("give effect to", "consistent with", "have regard to"), the particular formulation is not always necessarily of decisive importance for any given set of facts, and what ultimately matters is the legislative indication that the principles of the Treaty need to be addressed. In many cases, the practical effect of different Treaty clauses will be the same.</p>
D. Overarching Treaty settlement clause	<p>11. Agree</p> <p>EITHER</p> <p>Option A [Recommended] to include in the FTC Bill an overarching clause which states:</p> <p>In order to reflect the Crown's commitment to uphold Treaty settlements and other arrangements¹, and to recognise Treaty based iwi/hapū interests, this Bill provides protections for those matters including:</p> <p>(a) eligibility criteria to protect Treaty settlements and other arrangements;</p> <p>(b) for Treaty settlements and other arrangements to be given the same or equivalent effect under the FTC Bill as they would have under the equivalent processes in the original legislation (eg RMA, Conservation Act);</p>	<p>Yes / No</p>	<p>Following previous discussions with ministers, officials have not included options in relation to a 'Treaty principles' clause or a 'direct Treaty settlements clause' (which would require decision-makers under the Bill to act in a manner consistent with Treaty settlement and arrangements).</p> <p>If you agree to have an upfront, overarching Treaty settlement clause, officials recommend you choose Option A for the following reasons.</p> <p>Option A is a descriptive Treaty clause and reflects a commonly used formulation in legislation². The clause confirms that to reflect the Crown's intention (in this case in relation to Treaty settlements and iwi/hapū interests), the Bill sets out a number of listed protections. In that sense, the clause confirms an intention and then acts as a 'table of contents' for the other protections contained in the Bill itself.</p> <p>Option A includes specific references to iwi/hapū interests and consultation with iwi/hapū (Option B is a similar clause but without most of those specific references). Those iwi/hapū references are important to consolidate and reflect consultation obligations set out elsewhere in the Bill. This is particularly important in processes under legislation such as the RMA and Conservation Act, where iwi/hapū rights and participation extend well beyond the mechanisms provided in the Treaty settlements, including for yet-to-settle iwi.</p>

¹ Other arrangements will reflect the Cabinet decision and will be defined as those under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hāpu o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements under the RMA.

² In other statutes this clause in dealing with Treaty principles rather than Treaty settlements.

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	<p>(c) a requirement that applicants must include information on Treaty settlements and other arrangements and iwi/hapū interests in their application for referral and, if referred, their substantive application;</p> <p>(d) requirements on applicants, Ministers and expert panels to consult with Treaty settlement and related entities, iwi and hapū;</p> <p>(e) a requirement for a report on Treaty settlements and other arrangements and iwi/hapū interests to be provided to and considered by Ministers and expert panels;</p> <p>(f) for Ministers to decline applications for referral that are inconsistent with Treaty settlements and other arrangements; and</p> <p>(g) for expert panels to decline applications that are inconsistent with Treaty settlements and other arrangements.</p> <p>OR</p> <p>Option B: to include in the FTC Bill an overarching clause which states:</p> <p>In order to reflect the Crown's commitment to upholding Treaty settlements and other arrangements, this Bill provides protections for those matters including:</p> <p>[insert the same list as for Option A but without the references to 'iwi/hapū', except in (d)]</p> <p>OR</p> <p>Option C to include in the FTC Bill an overarching clause which is the same as Option A or Option B, but the chapeau would not refer to a 'Crown commitment' but rather would state:</p> <p>In order to uphold Treaty settlements and other arrangements [and to recognise iwi/hapū interests], this [Bill] provides protections for those matters including;</p> <p>[insert the list from Option A or B above]</p> <p>OR</p>	<p>S9(2)(g)(i)</p> <p>S9(2)(h)</p> <p>S9(2)(g)(i)</p> <p>Yes / No</p> <p>Yes / No</p>	<p>This Option also makes a clear statement about acting consistently with Treaty settlements to reflect the Cabinet decision. It will be important for Māori to see this type of commitment up-front, [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] The Crown experience (e.g. through Covid and previous RM reform) is that clear protection statements up-front in the legislation were important to Māori and prevented litigation and significant relationship issues.</p> <p>[REDACTED]</p> <p>Officials consider Option A is explicit that the same or equivalent rights and standards as currently apply through Treaty settlements and in-scope legislation will apply in the new fast-track regime. This is important because existing Treaty settlements were negotiated in the context of those provisions – PSGEs will expect that the same rights are recognised.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Options B to E are included so that Ministers have alternatives to consider.</p> <p>Option B is similar to Option A but does not include specific references to iwi/hapū interests (except in relation to consultation under (d)).</p> <p>The disadvantage of not referring to iwi/hapū interests is that iwi/hapū rights and participation in RMA, Conservation Act and other processes extend well beyond the mechanisms provided in the Treaty settlements. For example, in many RMA consenting processes, it is the hapū that participate and express their views as opposed (or in addition) to just the Treaty settlement entity or iwi authority (the Whanganui River/Te Awa Tupua and Waikato Rivers are examples).</p> <p>We consider that Option A better reflects the substance of the Bill in that it refers also to iwi/hapū interests.</p> <p>Option C is similar to Options A and B, but does not refer to a 'Crown commitment' in the chapeau. The clause therefore simply confirms the list of protections included elsewhere in the Bill.</p> <p>We consider there is value in confirming the Cabinet and Crown commitment to upholding Treaty settlement and related arrangements. The visible expression of that commitment will be important for Māori to see up-front in the Bill. Option C does, however, provide ministers with another option to consider in relation to the descriptive type Treaty settlement clause.</p> <p>Option D is a shorter clause which simply confirms that the Bill includes protections to reflect the Crown's commitment to upholding Treaty settlements and other arrangements and to recognising iwi/hapū interests.</p> <p>This is a shorter statement of what the Bill contains and the intention behind it. We consider that the statement of the 'Crown intention' will be important to Māori. The advantage of this formulation is that it is short and focussed. The disadvantage is that it does not set out clearly at the front of the Bill the types of protections intended to implement that Crown commitment.</p> <p>Option E is similar to Option D, but does not include a reference to the 'Crown's commitment'.</p> <p>As noted above for Option C, we consider there is value in confirming the Cabinet and Crown commitment to upholding Treaty settlement and related arrangements. The visible expression of that Crown commitment will be important for Māori to see up-front in the Bill from their Treaty partner. Option E does, however, provide ministers with another option to consider in relation to this condensed form of Treaty settlement clause.</p> <p>Option F states that the Bill includes protections to reflect the Crown's commitment to using its best endeavours to uphold Treaty settlements and other arrangements and to recognise iwi/hapū interests, to the extent practicable in the circumstances.</p>

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	<p>Option D to include in the FTC Bill an overarching clause which states:</p> <p>This Bill includes protections to reflect the Crown's commitment to upholding Treaty settlements and other arrangements and to recognising iwi/hapū interests.</p> <p>OR</p> <p>Option E to include in the FTC Bill an overarching clause which states:</p> <p>This Bill includes protections to uphold Treaty settlements and other arrangements and to recognise iwi/hapū interests.</p> <p>OR</p> <p>Option F to include in the FTC Bill an overarching clause which states:</p> <p>This Bill includes protections to reflect the Crown's commitment to using its best endeavours to the extent practicable to uphold Treaty settlements and other arrangements and to recognise iwi/hapū interests, to the extent practicable in the circumstances.</p>	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>	<p>This option includes two important qualifiers: 'best endeavours' and 'to the extent practicable in the circumstances'.</p> <p>The advantage of this option is that it provides some flexibility in terms of the standards required under the Bill (although that flexibility is also provided by the 'same or equivalent effect' type clause). The disadvantage is that Māori will see these qualifiers as diminishing their Treaty settlement redress and the Crown's commitment to uphold those matters.</p>

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Minister for Māori Crown Relations: Te Arawhiti

Hui with PSGEs on the fast-track consenting regime, Tuesday 27 February 2024

Date	23 February 2024	Priority	High
Report No.	2023/2024 - 158	File ref	DTS-09-02

Action sought

Minister for Māori Crown Relations: Te Arawhiti (Hon Tama Potaka)	forward this briefing to your colleagues, Minister Bishop, Minister Jones and Minister Brown; and	By 27 February 2024
	agree to further engagement with groups that are not invited to this hui; and	
	agree to provide notes to the invitees following 23 February hui.	

Contact for phone discussion (if required)

Name	Position	Phone	1 st Contact
Lil Anderson	Tumu Whakarae, Chief Executive The Office for Māori Crown Relations – Te Arawhiti		✓
Sheridan Smith	Deputy Chief Executive, Partnerships (Acting)		

S9(2)(a)

Hui with PSGEs on the fast-track consenting regime, Tuesday 27 February 2024

Purpose

1. This briefing provides you with background information for the online hui scheduled for 3.15pm to 4.00pm on Tuesday 27 February 2024 with post settlement governance entities (**PSGEs**), groups with initialled and signed deeds of settlement, and Ngā Hapū o Ngāti Porou. A draft agenda is attached at **Appendix 1**.
2. You will attend the hui from Minister Bishops office EW 6.3. Minister Jones, Brown and Simmonds may also attend the hui.
3. Lil Anderson, Tumu Whakarae, and Warren Fraser, Deputy Chief Executive, Strategy & Policy will attend this hui. From MfE, Martin Workman, Deputy Secretary Tūmatakōkiri and Nadeine Dommissie, Deputy Secretary Environment Management and Adaptation will attend.

The hui

4. The focus of the hui will be to discuss changes to the resource management laws and the establishment of a new fast-track consenting regime. MfE is preparing separate advice that will be shared with you. Suggested talking points are attached as **Appendix 2**.

Invitees

5. A list of invitees is included as **Appendix 3**.
6. Invites to this hui have been sent to 93 PSGEs and to groups that have initialled or signed deed of settlements and one holder of customary marine title. Both legislation and deeds of settlement create binding settlement commitments, many of which interact with resource management. For this reason, there is likely to be shared concerns and themes from these groups.
7. Ngā Hapū o Ngāti Porou will also be invited in their capacity as customary marine title holders under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.
8. Customary Marine Title recognises customary interests that iwi, hapū, and whānau have had in the common marine and coastal area since 1840. Both title holders and applicants have special rights in the resource management system to influence what happens in their customary area. Ngā Hapū o Ngāti Porou are customary marine title holders under Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019. They are also likely to share concerns and themes around resource management to PSGEs.

Follow-up after the hui

9. Based on previous Ministerial engagements on topics such as COVID 19 and Adverse Weather events, iwi are likely to have expectations around post-hui follow-ups including the dissemination of any summary material that can be made available and agencies working to respond to any questions that are raised but cannot be answered during the meeting.
10. We will work with MfE to ensure any information that can be shared is disseminated to invitees. Officials will also keep a record of any issues that are raised and will work with MfE on responses.

Background

11. You are one of four Ministers with delegated decision-making responsibilities on the new fast-track consenting regime (alongside Ministers Bishop, Jones, and Brown).
12. In the first phase of the Government's reform of the resource management system (**RMA reform**), the Government repealed the Natural and Built Environment and Spatial Planning Acts. Phase two of the RMA reform includes introducing a permanent fast-track consenting regime to improve the speed and process for resource approvals for major infrastructure projects. These changes are part of the Government's 100 Day Action Plan.
13. On 23 January 2024, Cabinet agreed to develop this new, permanent fast-track consenting regime aimed at enabling infrastructure and other projects that have significant local, regional and national benefits [CAB-24-MIN-0008 refers].
14. Cabinet authorised delegated Ministers to jointly make further detailed decisions on policy for the Fast-track Consenting bill (**FTC bill**). The Cabinet proposals on fast-track consenting are intended to improve decision making timeframes and give greater investment certainty, with well-designed projects having a clear and fast path to consent.
15. The policy decisions made on the FTC bill are significant for Māori in terms of the protection of Treaty settlements. Treaty settlements, takutai moana interests and other arrangements are one aspect of broader Treaty issues that Cabinet has agreed will be protected through this work.

Engagement with officials from the Ministry for the Environment

16. On 31 January, Minister Bishop wrote to a number of iwi representative groups including PSGEs regarding the Government's plan to develop fast-track consenting legislation and introduce changes to the National Policy Statement for Freshwater Management 2020 this year.
17. We understand that 122 groups were contacted by Minister Bishop's office. Since then, officials from MfE have engaged with PSGEs and other groups on the proposals. MfE officials have met with approximately 47 PSGEs to date. Information on the groups contacted by MfE is included in **Appendix 4**.
18. We understand that all invitees received the letter correspondence from Minister Bishop's office.
19. A high-level summary of the feedback that MfE officials have documented is included as **Appendix 5**.
20. High-level themes identified as part of this feedback include:
 - a. a desire to see the inclusion of a Treaty of Waitangi/Te Tiriti o Waitangi clause;
 - b. a commitment to upholding Treaty settlements that have been ratified and those that are still being negotiated;
 - c. concerns over the timeframe of the process, including inadequate engagement time and information to fully engage in the process;
 - d. concern that the health of te taiao/the environment could be undermined; and
 - e. some PSGEs noted that the fast tracking of consents can be beneficial and an opportunity for iwi to pursue iwi-led ventures.

21. Feedback also noted that useful resources and relationships that have been developed in the resource management space, such as Cultural Impact Assessments and Iwi Management Plans, may not be utilised or carry the same weighting under the FTC bill.
22. MfE officials intend to write to the groups they received feedback from, including responses to specific questions. MfE intends to share the FTC bill and more detailed policy decisions if and when they are able. More information on MfE responses to PSGEs and iwi groups is included in their briefing which we understand will be shared with you ahead of the hui.

Engagement with Ministers

Key themes and insights from engagement

23. Feedback from your hui with Pou Taiao and Ngāi Tahu, and feedback MfE received from PSGEs varied. Some consistent messaging included:
 - a. a desire to see Treaty settlement commitments and similar arrangements upheld;
 - b. concern around the timeframes and process;
 - c. development should not be at the expense of te taiao; and
 - d. potential for opportunity of development and growth.

Pou Taiao

24. You met with Pou Taiao of the National Iwi Chairs Forum (**NCIF**) on 19 February (2023/24 – 148 refers).
25. The hui was constructive. Pou Taiao indicated they did not want to see a standard Treaty clause in the fast-track legislation, rather something bespoke, as Treaty settlements themselves have elements that are bespoke. All stages of the fast-track process need to be Te Tiriti consistent, i.e., in the eligibility; referral; panel; and decision processes. Pou Taiao highlighted their desire to see partnership and early engagement with potentially affected Māori groups.
26. In the hui with Pou Taiao, Ministers noted that the FTC Bill will uphold Treaty settlement commitments and that they will continue work with Pou Taiao Technicians on the FTC Bill. You also noted that an opportunity for further consultation on the FTC Bill will occur alongside the select committee process.

Te Rūnanga o Ngāi Tahu

27. You also met with Te Rūnanga o Ngāi Tahu representatives on 19 February (2023/24 – 145 refers).
28. The hui was generally constructive, with the conversation focused on the drivers for fast-track consenting and the potential opportunities for Ngāi Tahu and the Crown to work together on matters of common interest. There was also kōrero on the underlying need to ensure that Treaty settlement arrangements and related agreements continue to be respected and upheld through this process.

Other engagement you may wish to consider

29. It may be appropriate to meet with other groups with interests, given the significant policy decisions being considered.

30. A separate hui could be held with groups that are in active negotiations but yet to reach a deed of settlement with the Crown and other iwi representative groups. The other iwi representative groups could include those that Minister Bishop's office communicated with on 31 January that are not included in the 27 February hui (94 groups). This would require communicating with a further 28 number of groups.
31. Additional hui would enable you to capture the views of groups who have a different intersect or relationship with the resource management outside treaty settlement commitments. This would mitigate the risk of not capturing a wide range of iwi/Māori views.

Potential implications of the fast-track legislation on Treaty settlements

32. In engagement to date PSGEs have raised concerns about the potential impact of fast-track consenting on Treaty settlements and takutai moana rights.
33. You and your colleagues have considered a range of ways to ensure that settlements are upheld consistent with the intent of the new fast-track legislation. Decisions taken by Ministers to date will provide protections and opportunities for Māori to be involved throughout the process, from pre-application to final decision, including:
 - a. requiring developers to engage with PSGEs and other Māori groups prior to applying to encourage them to work with Māori from the outset to find ways projects can accommodate Māori rights and interests;
 - b. making projects ineligible for the fast-track if they require whenua Māori or land returned through Treaty settlements unless the owners agree;
 - c. requiring responsible Ministers and expert panels to engage with relevant Māori groups before making decisions;
 - d. requiring Ministers and panels to give the same weight to Treaty settlement requirements that other decision makers would be required to;
 - e. including iwi nominees on the expert panels and requiring panel appointments to be consistent with Treaty settlement requirements; and
 - f. enabling projects to be declined if they cannot be made consistent with Treaty settlements.
34. These protections will help mitigate the risk to Treaty settlements, although more work on this with affected PSGEs will be required during the legislative process. You may wish to inform PSGEs of these protections and request their assistance with the work to come.

35. It is recommended that you:

- | | | |
|----|--|----------|
| a. | note that you are attending a hui alongside Hon Chris Bishop with post-settlement governance entities, groups with initialled and signed deeds and Ngā Hapū o Ngāti Porou on the establishment of a new fast-track consenting regime on 27 February 2024; | |
| b. | note the attached agenda (Appendix 1) and talking points (Appendix 2), to support you at this hui; | |
| c. | note you will have a facilitating role in the hui, and officials from Te Arawhiti and Ministry for the Environment will attend in support; | |
| d. | forward this briefing to your colleagues, Minister Bishop, Minister Jones and Minister Brown as delegated decision-making responsibilities on the new fast-track consenting regime; | YES / NO |
| e. | agree to further engagement with groups that are not invited to this hui; and | YES / NO |
| f. | agree to provide notes to the invitees following 27 February 2024 hui. | YES / NO |

Nāku noa, nā

Lil Anderson

Tumu Whakarae

The Office for Māori Crown Relations – Te Arawhiti

NOTED / APPROVED / NOT APPROVED
<p>Hon Tama Potaka Minister for Māori Crown Relations: Te Arawhiti</p>
Date: / / 2024

AGENDA

Hui between post-settlement governance entities, groups with initialled and signed deeds of settlement and Ministers Fast-track consenting

Date: Tuesday 27 February 2024
Time: 3:15-4:00pm
Venue: EW 6.3 and online

INVITEES
Hon Chris Bishop (Minister Responsible for Resource Management Reforms)
Hon Tama Potaka (Minister for Māori Crown Relations: Te Arawhiti)
Hon Shane Jones (Minister for Regional Development)
Hon Simeon Brown (Minister for Local Government)
Hon Penny Simmonds (Minister for Environment)
Representatives of all post-settlement governance entities, groups with initialled and signed deeds of settlement and Ngā Hapū o Ngāti Porou
Officials from Te Arawhiti: <ul style="list-style-type: none"> Lil Anderson (Tumu Whakarae) Warren Fraser (Deputy Chief Executive, Strategy and Policy)
Officials from the Ministry for the Environment: <ul style="list-style-type: none"> Martin Workman (Deputy Secretary Tūmatakōkiri) Nadeine Dommissie (Deputy Secretary Environment Management and Adaptation)

AGENDA	
Karakia	By invitation
Opening Ministerial remarks	Minister Potaka (Chair)
Update on Fast-track consenting <ul style="list-style-type: none">• Key elements• Process	Minister Bishop
PSGE feedback	PSGE representatives
Next steps	Minister Potaka
Karakia	By invitation

Appendix 2: Suggested talking points for hui with PSGEs, groups with initialled and signed deeds of settlement, Ngā Hapū o Ngāti Porou and Ministers

- Set the tikanga for an online hui, such as muting microphones, asking attendees to raise hands for questions or ask questions through the chat function.

Key Messages

- We will honour settlement commitments and other specific arrangements like the Marine and Coastal Area, Joint Management Agreements and Mana Whakahono a Rohe.
- We are taking the time to be clear about how those protections will apply in the fast-track legislation and in practice once the legislation is in force.
- Given the purpose of the legislation is to get more significant infrastructure projects approved quicker, other existing regimes like the RMA and the Conservation Act will be further down the hierarchy of considerations.

Possible Talking Points

Objectives

- Big infrastructure projects are taking too long and not enough of them are getting built. We want to get things done.
- We know Māori want to see new roads, dams, wind farms, and other significant infrastructure built too. We know that this is not at any cost.
- What we want to do through this Fast-Track legislation is to turbo-charge the consenting process for those projects. That means:
 - Getting approvals made within faster timeframes.
 - Ensuring all approvals for a project are considered at the same time.
 - Being clear in the legislation that we're giving greater weight to green-lighting development, while also looking after the environment.
 - Acknowledge that this weighting is not something you agree with.

Honouring our agreements

- We will honour Treaty settlement commitments and other specific arrangements like the Marine and Coastal Area Act, Joint Management Agreements and Mana Whakahono a Rohe. The Coalition Government is committed to that and we as Ministers are committed to that.
- To achieve this we're looking at how to:
 - require developers, Ministers and panels to engage with PSGEs and other Māori groups at various stages of the process;
 - including requiring developers to engage with PSGEs and other Māori groups before applying to encourage them to work constructively with Māori from the outset.
 - protect Treaty settlements – both lands returned and iwi participation/influence through redress related to planning and management;
 - Treaty settlement land and whenua Māori can only be included if the owners agree.
 - include iwi nominees on the expert panels; and
 - ensure consistency with Treaty settlements is a matter for Ministers to weigh in their final decision whether or not to approve a project.
- I hope when you see the Bill you will feel reassured about how seriously we are taking this.
- We know there is more to do to make sure settlements are protected and broader Treaty responsibilities are upheld. We want to work with you through the legislative process to make sure we get this right.

Engagement

- We understand the impact these tight timeframes are having on our engagement with you.
- Hui like this under such urgency are less than ideal.
- However this Government thinks this fast-track regime is critical to our country's future.

- That's why we're pressing ahead at pace.
- We recognise that engaging with you on the legislation is vital to the success of both the legislation and in practice.
- This is a start and there will be further opportunities for direct engagement as well as the Select Committee process.
- It's our expectation that officials will work alongside you on this from now until the legislation is enacted and then on the process that follows.

Released under the Official Information Act 1982

Appendix 3: List of invitees – 27 February hui

Iwi	PSGE	Contact person	Title	Date that group met with MfE officials ¹	Status
Ngātikahu ki Whangaroa	Kahukuraariki Trust	Teresa Tepania-Ashton	Chair		PSGE
Ngāti Kurī	Te Manawa o Ngāti Kuri	Harry Burkhardt	Chair		PSGE
Te Roroa	Te Roroa Manawhenua Trust	Thomas Hohaia	Chair		PSGE
Te Aupōuri	Te Rūnanga Nui o Te Aupōuri Trust	Maahia Nathan	Chair		PSGE
Ngāi Takoto	Te Rūnanga o Ngāi Takoto	Wallace Rivers	Chair		PSGE
Te Rarawa	Te Rūnanga o Te Rarawa	Katie Murray	Chair		PSGE
Te Uri o Hau	Te Uri o Hau Settlement Trust	Reno Skipper Jonathan Rishworth	Chair CEO		PSGE
Ngā Mana Whenua o Tāmaki Makaurau	Whenua Haumi Roroa o Tāmaki Makaurau Limited Partnership	John McEnteer	Chair		PSGE
Ngāti Whātua o Kaipara	Ngā Maunga Whakahii o Kaipara Development Trust	Dame Naida Glavish	Chairperson	25/01/2024	PSGE
Ngāi Tai ki Tāmaki	Ngāi Tai ki Tāmaki Trust	Rewa (Billy) Brown	Chair	7/02/2024	PSGE
Ngāti Manuhiri	Ngāti Manuhiri Settlement Trust	Mook Hohnneck	Chair		PSGE
Ngāti Tamaoho	Ngāti Tamaoho Settlement Trust	Tori Ngataki	Chair		PSGE
Ngāti Whātua Ōrākei	Ngāti Whātua o Ōrākei Trust Board	Marama Royal	Chair		PSGE
Te Kawerau a Maki	Te Kawerau Iwi Settlement Trust	Te Warena Taua (MNZM)	Chair	5/02/2024	PSGE
Maniapoto (Waipa River)	Te Nehenehenui	Peter Douglas Sam Mikaere Maia Wikaira	Chair CEO	25/01/2024	PSGE

¹ MfE also held meet with iwi in the Tairāwhiti and Te Tau Ihu region on 09/02/2024. However, MfE did not specify which iwi they met with.

Iwi	PSGE	Contact person	Title	Date that group met with MfE officials ¹	Status
Waikato-Tainui (Waikato River)	Te Whakakitenga o Waikato Inc Trustee of Waikato Raupatu Land Trust, and Waikato Raupatu River Trust	Donna Flavell Tuku Morgan	CE Chair		PSGE
Raukawa	Raukawa Settlement Trust	Kataraina Hodge	Chair	31/01/2024	PSGE
Te Arawa	Te Arawa River Iwi Trust	Evelyn Forrest	Chair		PSGE
Maraeroa A and B Blocks	Maraeroa A & B Trust	Destiny Ordish	Chair		PSGE
Ngāti Hauā	Ngāti Hauā Iwi Trust	Mokoro Gillett	Chair	8/02/2024	PSGE
Ngāti Korokī Kahukura	Taumata WiiWii Trust	Karaitiana Tamatea Rahui Papa	Co-chair Co-chair	25/01/2024 & 7/02/2024	PSGE
Ngāti Hinerangi	Te Puāwaitanga o Ngāti Hinerangi Iwi Trust	Tomai Smith	Chair		PSGE
Pouakani	Te Putahitanga o Nga Ara Trust (Pouakani Trust)	Craig Ahipene Morgan Te Heuheu	Chair CEO		PSGE
Central North Island Forests Land Collective	CNI Iwi Holdings Limited	Bronco Carson	Chair		PSGE
Ngāti Rangitihi	Te Mana o Ngāti Rangitihi Trust	Leith Comer Anthony Olsen	Chair General Manager		PSGE
Ngāti Mākinō	Ngāti Mākinō Iwi Authority	Laurence Tamati	Chairman		PSGE
Ngāti Rangiteaorere	Ngāti Rangiteaorere Koromatua Council	Kereama Pene Dr Kenneth Cameron- Kennedy	Co-Chair Co-Chair		PSGE
Ngāti Tūrangitukua	Ngāti Tūrangitukua Charitable Trust	Lauren Fletcher Bernice Te Ahuru	Chair Operations Manager		PSGE
Ngāti Tūwharetoa (Bay of Plenty)	Ngāti Tūwharetoa (Bay of Plenty) Settlement Trust	Karilyn Te Riini	Co-Chair		PSGE
Ngāti Whakaue (Wai 94 claim)	Pukeroa Oruawhata Trust	David Tapsell	Deputy Chair	30/01/2024	PSGE
Tapuika	Tapuika Iwi Authority Trust	Vance Skudder Andy Gowland-Douglas	Chair CEO	1/02/2024 & 9/02/2024	PSGE

Iwi	PSGE	Contact person	Title	Date that group met with MfE officials ¹	Status
Te Arawa Lakes	Te Arawa Lakes Trust	Geoff Rolleston Dr Daryn Bean	Chairman	2/02/2024	PSGE
Waitaha	Te Kapu o Waitaha	Vivienne Robinson Frank Grant	General Manager Chair	30/01/2024	PSGE
Ngāti Tūwharetoa	Te Kotahitanga o Ngāti Tūwharetoa	Wiari Reuhina	Chair	5/02/2024	PSGE
Affiliate Te Arawa Iwi and Hapu	Te Pumautanga o Te Arawa Trust	Clark Pirika	Chair	5/02/2024	PSGE
Ngāti Rangiwhewehi	Te Tāhuhu o Tawakeheimoa Trust	Erin Thompson-Pou	Chair		PSGE
Ngāti Awa	Te Rūnanga o Ngāti Awa	Tuwhakairiora O'Brien	Chair		PSGE
Ngāti Manawa	Te Rūnanga o Ngāti Manawa	Kani Edwards Maramena Vercoe	Chair CE		PSGE
Ngāti Whare	Te Rūnanga o Ngāti Whare	Bronco Carson Mere George	Chair CEO		PSGE
Ngāti Pūkenga	Te Tāwharau o Ngāti Pūkenga Trust	Mark Ngahoia Scott	Chair		PSGE
Tūhoe	Te Uru Taumatua	Tamati Kruger Kirsti Luke	Chair CE		PSGE
Rongowhakaata	Rongowhakaata Settlement Trust	Staci Hare	Chair	5/02/2024	PSGE
Ngai Tāmanuhiri	Tāmanuhiri Tutu Poroporo Trust	Pauline Hill	Chair	29/01/2024	PSGE
Ngāti Porou	Te Rūnanganui o Ngāti Porou	Patrick Tangaere (Albie is ES)	Chair	24/01/2024	PSGE
Ngāti Kahungunu ki Heretaunga Tamatea	Tamatea Pōkai Whenua	Liz Graham Dr Darryn Russell	Chair	29/01/2024	PSGE
Ahuriri Hapū	Mana Ahuriri Trust	Te Kaha Hawikirangi	Chair	26/01/2024	PSGE
Maungaharuru-Tangitū Hapū	Maungaharuru-Tangitū Trust	Tania Hopmans Liz Munro	Chair CEO (Interim)	26/01/2024	PSGE
Ngāti Pāhauwera	Ngāti Pāhauwera Development Trust	Toro Waaka Robin Hape	Chair CEO	30/01/2024	PSGE
Rangitāne o Wairarapa Tāmaki-nui-ā-Rua	Rangitāne Tū Mai Rā Trust	Sonya Rimene	Chair		PSGE
Wairoa	Tātau Tātau o Te Wairoa Trust	Leon Symes Lewis Ratapu	Chair CEO		PSGE

Iwi	PSGE	Contact person	Title	Date that group met with MfE officials ¹	Status
Ngāti Hineuru	Te Kōpere o te iwi o Hineuru Trust	Mana Hazel April Hetaraka	Chair CE		PSGE
Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua	Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua Settlement Trust	Haami Te Whaiti	Chair	7/02/2024	PSGE
Whanganui River Iwi	Ngā Tāngata Tiaki o Whanganui	Sheena Maru	Chair	7/02/2024	PSGE
Ngaa Rauru Kiitahi	Te Kaahui o Rauru	Mike Neho	Chair	9/02/2024	PSGE
Taranaki Iwi	Te Kāhui o Taranaki	Jacqueline King	Chair	9/02/2024	PSGE
Ngāruahine	Te Korowai o Ngāruahine Trust	Paula Carr	Pou Whakarae	9/02/2024 & 12/02/2024	PSGE
Te Ātiawa	Te Kōtahitanga o Te Ātiawa Trust	Liana Huia Poutu	Chair	9/02/2024	PSGE
Ngāti Apa (North Island)	Te Rūnanga o Ngā Wairiki Ngāti Apa	Pahia Turia Grant Huwylar	Chair CE		PSGE
Ngāti Mutunga	Te Rūnanga o Ngāti Mutunga	Jamie Tuuta	Chair	9/02/2024	PSGE
Ngāti Ruanui	Te Rūnanga o Ngāti Ruanui Trust	Haimona Maruera Junior	Tumu Whakarae	9/02/2024	PSGE
Ngāti Tama	Te Rūnanga o Ngāti Tama	Frances White	Chair	9/02/2024	PSGE
Ngāti Rangī	Te Tōtarahoe o Paerangi	Whetu Moataane Helen Leahy	Chair CEO		PSGE
Ngāti Maru (Taranaki)	Te Kāhui Maru Trust	Anaru Marshall Sam Tamarapa	General Manager Chair	9/02/2024	PSGE
Taranaki Whānui ki Te Upoko o Te Ika	Port Nicholson Block Settlement Trust	Whatanui Winiata Kara Puketapu-Dentice	Chair CEO		PSGE
Rangitāne o Manawātū	Rangitāne o Manawātū Settlement Trust	Danielle Harris	Chair	29/01/2024	PSGE
Ngati Toa Rangatira	Te Rūnanga o Toa Rangātira Inc (Toa Rangatira Trust)	Callum Katene Helmut Modlik	Chair CEO	8/02/2024	PSGE
Ngāti Apa ki te Rā Tō	Ngāti Apa ki te Rā Tō Post-Settlement Trust	Hinemoa Connor	Chair		PSGE
Ngāti Rārua	Ngāti Rārua Settlement Trust	Olivia Hall	Chair		PSGE
Ngāti Tama ki Te Tau Ihu	Ngāti Tama ki Te Waipounamu Trust	Anthony (Butch) Little	Chair		PSGE

Iwi	PSGE	Contact person	Title	Date that group met with MfE officials ¹	Status
Rangitāne o Wairau	Rangitāne o Wairau Settlement Trust	Calvin Hart Janis de Thierry Corey Hebbard	Co-Chair Co-Chair General Manager		PSGE
Te Ātiawa o Te Waka-a-Māui	Te Ātiawa o Te Waka-a-Māui Trust	Rachael Hāte	Chair		PSGE
Ngāti Kōata	Te Pātaka a Ngāti Koata	Caroline Palmer	Chair		PSGE
Ngāti Kuia	Te Rūnanga o Ngāti Kuia Trust	Tania Alesana Rebecca Mason	Co-Chair Co-Chair		PSGE
Ngāi Tahu	Te Rūnanga o Ngāi Tahu	Justine Tipa	Chair	23/01/2024	PSGE
Moriori	Moriori Imi Settlement Trust	Maui Solomon	Chair		PSGE
Ngāti Ranginui	Nga Hapū o Ngāti Ranginui Settlement Trust	Te Pio Kawe Charlie Rahiri	Chair Chair		Legislation introduced
Ngāti Tara Tokanui	Ngāti Tara Tokanui Trust	Amelia Williams	Chair		Legislation introduced
Ngāti Hei	Hei o Wharekaho Settlement Trust	Joe Davis	Chair		Legislation introduced
Ngāti Paoa	Ngāti Paoa Iwi Trust	John Hutton Herearoha Francis Skipper	CE Chairperson		Legislation introduced
Hauraki Collective	Pare Hauraki Cultural Redress Trust; Pare Hauraki Forests Limited Partnership; and Pare Hauraki RFR Limited Partnership	Paul Majurey	Chair		Legislation introduced
Te Korowai o Wainuiārua	Uenuku Charitable Trust	Aiden Gilbert	Chair		Legislation introduced

Iwi	PSGE	Contact person	Title	Date that group met with MfE officials ¹	Status
Taranaki Maunga	Te Tōpuni Ngārahu (Collective Entity representing all eight iwi of Taranaki) - Established in Sept 2023 Te Tōpuni Kōkōrangi (Joint Governance Entity) - yet to be established.	Jamie Tuuta Liana Poutu Frances White Holden Hohaia Haimona Maruera Jacqui King Paula Carr Michael Neho	Initial Trustee Initial Trustee Initial Trustee Initial Trustee Initial Trustee Initial Trustee Initial Trustee Initial Trustee		Legislation introduced
Ngā Mana Whenua o Tāmaki Makaurau	Te Patukirikiri Iwi Inc	David Williams	Chairperson		Deed signed
Ngā Mana Whenua o Tāmaki Makaurau	Te Ākitai Waiohua Iwi Authority	Karen Wilson	Chairperson		Deed signed
Ngāti Rahiri Tumutumu	Ngāti Tumutumu Trust	Daniel Braid	Chair		Deed initialled and ratified
Ngā Mana Whenua o Tāmaki Makaurau	Ngaati Whanaunga	Michael Baker	Chairperson		Deed initialled and ratified
Ngā Mana Whenua o Tāmaki Makaurau	Ngāti Tamaterā Treaty Settlement Trust	Antony Royal	Chair		Deed initialled and ratified
Ngā Mana Whenua o Tāmaki Makaurau	Ngāti Maru (Hauraki) Treaty Settlement Negotiators	David Taipari	General Manager		Deed initialled and ratified
Marutūāhu Collective	2 Redress Entities: Commercial redress - Marutūāhu Rōpū Limited Partnership Cultural redress - Taonga o Marutūāhu Trustee Limited	Paul Majurey	Chair		Deed initialled and ratified

Iwi	PSGE	Contact person	Title	Date that group met with MfE officials ¹	Status
Te Whānau a Apanui	Mandated individuals: Rikirangi Gage Matanuku Mahuika Natalie Coates	Rikirangi Gage	Lead Negotiator	9/02/2024	Deed initialled
Ngā Potiki	Ngā Pōtiki a Tamapahore Trust	Spencer Webster	Chair	25/01/2024	Legislation introduced
Ngāi Te Rangi	Ngāi Te Rangi Settlement Trust	Charlie Tawhiao Paora Stanley	Chair CEO	2/02/2024	Legislation introduced
Whakatōhea	Te Tāwharau o Te Whakatōhea Trust	Vaughan Payne Gina Smith	Chair Administration	9/02/2024	Legislation introduced
Ngā Hapū o Ngāti Porou	Ngā hapū o Ngāti Porou Potikirua ki Whangaokena Takutai Kaitiaki Trust Whangaokena ki Onepoto Takutai Kaitiaki Trust Te Papatipu o Uepohatu me te Papatipu o te Ngaere Takutai Kaitiaki Trust Whānau Hapū of Te Aitanga a Mate Te Aowera and Te Whanau a Hinekenu Takutai Kaitiaki Trust Ngā Hapū o Waipiro Takutai Kaitiaki Trust Ngāti Wakarara and Ngāti Hau Takutai Kaitiaki Trust	Rei Kohere Agnes Walker	Chair Representative	29/01/2024	Holders of Customary Marine Title under Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

Appendix 4: Groups who received a letter from Minister Bishop or engaged with MfE officials but are not invited to 27 February hui

We understand the groups below to have been sent correspondence from Minister Bishop's correspondence on the proposed fast-track consenting regime. These groups have not been invited to the Tuesday 27 February hui because they are not yet settled or are captured by a PSGE that has been invited.

MfE also engaged with three groups that did not receive correspondence from Minister Bishop's office. These groups are Te Maru o Kaituna, Ngāti Kahungunu Iwi Inc. and Te Matau-a-Maui.

Iwi/ Trust/ Group	Contact person	Title	Date that group met with MfE officials	Status
Te Rūnanga o Ngāti Makaawhio	Paul Madgwick	Chairperson		PSGE: Te Rūnanga o Ngāi Tahu
Te Rūnanga o Ngāti Waewae	Francois Tumahai	Chairperson		PSGE: Te Rūnanga o Ngāi Tahu
Te Ohu Kaimoana	Graeme Hastilow	Acting CEO	9/02/2024	Fisheries Settlement Entity
Tūwharetoa Māori Trust Board	John Bishara	Chair		Redress entity
Tupuna Taonga o Tāmaki Makaurau Trust	Karen Wilson	Chair	31/01/2024	Redress entity
Mōkai Pātea Waitangi Claims Trust	Utiku Potaka	Chair		Not yet settled
Ngā Hapū ō Otaki (Raukawa ki te Tonga)	Denise Hapeta	Chair		Not yet settled
Ngā Uri o Tamanui Trust	Rawiri Brown Owen Loyd	Chairperson		Not yet settled
Ngāitai	Anaru Vercoe	Chair		Not yet settled
Ngāti Hako	Josie Anderson	Negotiators		Not yet settled

Iwi/ Trust/ Group	Contact person	Title	Date that group met with MfE officials	Status
	John Linstead			
Ngāti Mutunga o Wharekauri	Gail Amaru	CEO		Not yet settled
Ngāti Porou ki Hauraki	John Tamihere	Chairperson		Not yet settled
Ngāti Rehua – Ngātiwai ki Aotea Trust	Opo Ngawaka	Chairperson		Not yet settled
Ngāti Ruapani mai Waikaremoana Negotiation Group	Kara Puketapu-Dentice	Chair	29/01/2024	Not yet settled
Ngāti Te Ata	Josie Smith	Chair		Not yet settled
Ngātiwai Trust Board	Aperahama Edwards	Chairperson	7/02/2024	Not yet settled
Te Rūnanga-Ā-Iwi-O-Ngāpuhi	Mane Tahere	Chairperson		Not yet settled
Whanganui Land Settlement Negotiation Trust	Ken Mair	Chairperson		Not yet settled
Ātiawa ki Whakarongotai Charitable Trust	Cherie Seamark	Chairperson		Not yet settled
Te Aitanga a Māhaki	Pehimana Brown	Chairperson	30/01/2024	Not yet settled
Te Rūnanga A-Iwi o Ngāti Kahu	Margaret Mutu	Chairperson		Not yet settled
Te Runanga o Ngāti Hine	Pita Tipene	Chairperson		Not yet settled
Te Rūnanga o Ngāti Whātua	Alan Riwaka	CEO		Not yet settled
Te Rūnanga o Ngāti Rēhia Trust	Kipa Munro	Chairperson		Not yet settled
Patuharakeke Te Iwi Trust Board	Deborah Harding	Chairperson		Not yet settled

Iwi/ Trust/ Group	Contact person	Title	Date that group met with MfE officials	Status
Te Whānau a Kai	David Hawea	Chairperson	30/01/2024	Not yet settled
Te Kahu o Taonui- Te Tai Tokerau iwi collective established in 2006/07			7/02/2024	Iwi collective
Te Runanga o Whaingaroa	Mariameno Kapa-Kingi	Chairperson		Mandated iwi organisation

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Appendix 5: High-level summary of the feedback from PSGEs and iwi groups received by MfE officials on fast track consenting

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Aide Memoire

To	Hon Tama Potaka Minister for Māori Crown Relations: Te Arawhiti	File no. DTS-09-02
From	Lil Anderson Tumu Whakarae, Chief Executive [REDACTED] S9(2)(a)	Report no. 2023/2024 - 159
cc.	Sheridan Smith Deputy Chief Executive, Partnerships (Acting)	
Date	27 February 2024	
Title	Feedback received from PSGEs ahead of Fast-track Consenting Bill hui on 27 February	

Purpose

1. You and Minister Bishop are scheduled to meet with post settlement governance entities (PSGEs) regarding the proposed Fast-track Consenting Bill on Tuesday 27 February from 3:15pm-4.00pm. You are attending the meeting in Minister Bishop's office (EW 6.3) – Ministers Jones, Brown and Simmonds have also been invited to attend.
2. This aide memoire sets out feedback we have received from PSGEs since the invitation to the hui was circulated.

Background

3. This advice should be read alongside the meeting pack we sent you on 23 February [AM 2023/24 – 158 refers].
4. Invites to the Tuesday 27 February hui have been sent to:
 - a. Chairs of 93 PSGEs (with some Chairs choosing to forward on to their Chief Executives), which includes groups with enacted legislation as well as those with initialled or signed deed of settlements; and
 - b. Ngā Hapū o Ngāti Porou in their capacity as customary marine title holders under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

Feedback received from PSGEs by Te Arawhiti

5. Te Arawhiti has received communications from the following PSGEs ahead of Tuesday's hui:

PSGE Name	Contact Person	Title
Te Rūnanga o Ngāti Mutunga	Mitchell Ritai	General Manager
Te Rūnanga o Ngā Wairiki Ngāti Apa	Pahia Turia	Chair
Te Rūnanga o Ngāti Tama	Frances White	Chair
Te Ākitai Waiohua Iwi Authority	Karen Wilson	Chair
Te Korowai o Ngāruahine Trust	Emma Gardiner	Chair

6. These communications are summarised by theme in the table attached as **Appendix 1**, with our proposed responses should these issues be raised in the hui. Note, these suggested responses are based on decisions to date by Cabinet and delegated Ministers. However, it is possible these decisions could be varied by Cabinet on 4 March when it decides whether to introduce the Bill. We recommend you note this caveat when you speak to the policy in the Bill.
7. You earlier received a briefing from Te Arawhyiti (2023/2024 – 158) which included a summary of the feedback that the Ministry for the Environment (**MfE**) had received to date from PSGEs regarding fast-track consenting proposals. Ahead of Tuesday's hui, you and Minister Bishop will receive a further briefing from MfE, updated to include proposed responses to PSGE feedback. We note that a consistent request has been made by PSGEs to see the content of the proposed Fast-track Consenting Bill.
8. We understand the tone of engagement to date has been tense. PSGEs had been advised they were likely to receive a response to their feedback ahead of the Tuesday 27 February hui. MfE have now advised this has not happened. Ministers should be aware that the lack of response, and the sense of an absence of information, are likely to have further heightened tensions ahead of the hui.

Recommendations

9. It is recommended you:
 - a. **note** the content of this aide memoire;
 - b. **note** that you will receive a briefing from MfE including the feedback MfE have had from PSGEs as well as their proposed responses; and
 - c. **forward** a copy of this briefing to Minister Bishop.

YES / NO

Nāku noa, nā

Lil Anderson
Tumu Whakarae

NOTED / APPROVED / NOT APPROVED
<p>Hon Tama Potaka Minister for Māori Crown Relations: Te Arawhiti</p>
Date: / / 2024

Appendix 1: Communications that Te Arawhiti has received from PSGEs ahead of Tuesday 27 February hui

Themes of feedback received	Feedback received from	Suggested response
<i>Upholding Treaty Principles</i> <ul style="list-style-type: none"> Concern about review of the principles of the treaty. Do not want rights guaranteed in Te Tiriti o Waitangi diminished. 	Te Rūnanga o Ngā Wairiki Ngāti Apa	<ul style="list-style-type: none"> Ministers are still considering how the Treaty and its principles will be referenced in the Bill.
<i>Upholding Treaty Settlements</i> <ul style="list-style-type: none"> New legislation should be consistent with Treaty settlements and principles of Te Tiriti o Waitangi. Opposes any legislative change that impacts Treaty settlements. Will the Bill include a requirement that decision-makers act in a manner consistent with the principles of the Treaty and Treaty Settlements as the COVID fast track legislation did? 	Te Ākitai Waiohūa Iwi Authority Te Rūnanga o Ngā Wairiki Ngāti Apa Te Rūnanga o Ngāti Tama	<ul style="list-style-type: none"> The coalition government has made a commitment to honour Treaty settlements. We will uphold this commitment in the fast track Bill. Specific provisions will be in the Bill to require engagement with Māori at several stages and ensure that iwi participate on panels. Panels will also have to consider strategy documents and statutory values provided for by settlements. Ministers are still considering whether overarching provisions like those in the COVID fast track legislation are needed.

Themes of feedback received	Feedback received from	Suggested response
<p><i>Difference between the old and new fast track consenting regimes</i></p> <ul style="list-style-type: none"> How does this differ from the current fast track process launched under the COVID-19 Recovery (Fast-Track Consenting Act) 2020? Are the timeframes similar to the present Fast Track process? 	Te Rūnanga o Ngāti Tama	<ul style="list-style-type: none"> The COVID fast track legislation was just for consents under the RMA. The new fast track will be a one-stop shop including approvals under other Acts as well, including the Conservation Act, the Wildlife Act and the Reserves Act. Another key difference is that Ministers will make the final decisions on projects, not the expert panels. Not all the timeframes are nailed down yet but they will be similar to the present fast track process.
<p><i>How will Māori participate?</i></p> <ul style="list-style-type: none"> Will iwi have a right to nominate panel members (like the COVID fast track legislation)? Will there still be a requirement for panels to have an understanding of tikanga Māori? Do iwi have the opportunity to provide feedback on applications to use the fast-track to the Minister and 	Te Rūnanga o Ngāti Tama	<ul style="list-style-type: none"> Panels will include one person nominated by iwi authorities, plus any extra members required to comply with Treaty settlements. Panels will be required to have expertise in the Treaty of Waitangi and its principles. As yet Ministers have not agreed that panels should have expertise in tikanga Māori. Before referring a project the Minister must seek the views of iwi and other Māori groups. Panels will also

Themes of feedback received	Feedback received from	Suggested response
<p>to the panel on the substantive applications?</p> <ul style="list-style-type: none"> Is the government reviewing the remuneration for panel members (noting that the current fast track rates are significantly less than normal commissioner rates)? 		<p>be required to seek input from iwi and other groups when considering conditions for projects.</p> <ul style="list-style-type: none"> It will be key to have good panels and enough of them to make the system work. Panels will need to be paid appropriately for their work. Officials are preparing advice on this.
<p><i>Engagement on Fast track consenting Bill</i></p> <ul style="list-style-type: none"> Fast track consenting work hasn't had adequate engagement. PSGEs reserve the right to provide further feedback after a draft bill is available 	<p>Te Korowai o Ngāruahine Trust</p> <p>Te Rūnanga o Ngā Wairiki Ngāti Apa</p> <p>Te Ākitai Waiohūa Iwi Authority</p>	<ul style="list-style-type: none"> We understand the impact these tight timeframes are having on our engagement with you. This Government thinks this fast-track regime is critical to our country's future. That's why we're pressing ahead at pace. It's our expectation that officials will work alongside you on this from now until the legislation is enacted and then on the process that follows. There will be further opportunities for direct engagement as well through the Select Committee process.

Themes of feedback received	Feedback received from	Suggested response
<i>Resourcing for iwi to participate</i> Will the government provide resourcing to enable iwi to effectively participate in the processes?	Te Rūnanga o Ngāti Tama	<ul style="list-style-type: none"> The government has not at this time approved funding for iwi to participate in the process.
<i>Invitees to PSGE hui</i> <ul style="list-style-type: none"> Questions were raised about which groups have received invitations to this hui. 	Te Rūnanga o Ngāti Mutunga	<ul style="list-style-type: none"> Groups with enacted legislation and initialled or signed deeds of settlement were invited to the hui. Invitees went to Chairs in the first instance or to contacts who we have been directed to contact on fast-track consenting matters.

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